Supreme Court, U.S.
FILED
JUL 17 2003
OFFICE OF THE CLERK

No. 02-1315

IN THE SUPREME COURT OF THE UNITED STATES

GARY LOCKE, GOVERNOR OF THE STATE OF WASHINGTON, ET AL.,

Petitioners,

v.

JOSHUA DAVEY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED FEB. 24, 2003
CERTIORARI GRANTED MAY 19, 2003

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The following opinions and orders have been omitted in printing this joint appendix because they appear on the following pages of the appendix to the printed Petition For Certiorari:

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Order of the United States Court of Appeals for the Ninth Circuit Denying Petition for Rehearing and Rehearing En Banc, November 26, 2992 ..... 86a

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RELEVANT DOCKET ENTRIES

U.S. District Court
U.S. District Court -- Western Washington (Seattle)

CIVIL DOCKET FOR CASE #: 00-CV-61

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Docket as of March 11, 2003 2:37 am — Page 2

Proceedings include all events. — REOPEN
2:00cv61 Davey v. Locke, et al

1/13/00	1	COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELEIF [sic] AND DAMAGES JURY DEMAND [Entry date 01/18/00]
2/2/00	8	ANSWER to complaint [1-1] by defendants [Entry date 02/04/00]
2/10/00	10	MOTION by plaintiff for preliminary injunction; OA REQ'D NOTED FOR 3/3/00
3/21/00	25	ORDER by Judge Barbara J. Rothstein DENYING pltf's motion for preliminary injunction [10-1]
7/24/00	36	MOTION by defendants for summary judgment of dismissal NOTED FOR 8/18/00 [Entry date 07/27/00]

7/24/00 39 MOTION by plaintiff for summary judgment; OA REQ'D NOTED FOR 8/18/00 [Entry date 07/27/00]

10/5/00 63 ORDER by Judge Barbara J. Rothstein DENYING pltf's motion for summary judgment [39-1] and GRANTING dfts' motion for summary judgment of dismissal [36-1]

10/6/00 64 JUDGMENT: by Judge Barbara J. Rothstein - Davey's mtn for sum jgmt is DENIED and HECB's mtn for sum jgmt is GRANTED.
As a matter of law, HECB is entitled to complete dismissal of Davey's complaint
Entered on: 10/6/00

10/26/00 65 NOTICE OF APPEAL by plaintiff Joshua Davey from Dist. Court decision [64-2], [63-1] [Entry date 10/27/00]

10/26/00 66 MOTION by plaintiff Joshua Davey for injunction pending appeal NOTED FOR 11/10/00 [Entry date 10/27/00]

11/21/00 74 ORDER by Judge Barbara J. Rothstein DENYING pltf's motion for temporary injunction [66-1]. The court accepts HECB's offer to set aside $1542 during the pendency of Davey's appeal, which shall be paid to Davey upon court order in the event that he prevails on appeal [Entry date 11/22/00]

US Court of Appeals for the Ninth Circuit
Case Summary

Court of Appeals Docket #: 00-35962 Filed: 11/9/00
Nsuit: 3440 Other civil rights (Fed)
Davey v. Locke, et al
Appeal from: Western District of Washington (Seattle)

Lower court information:
District: 0981-2 : CV-00-00061-BJR
presiding judge: Barbara J. Rothstein, Chief Judge

7/18/02 FILED OPINION: REVERSED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published. Pamela A. RYMER, author; M. M. McKEOWN, dissenting; Ronald M. GOULD.) FILED AND ENTERED JUDGMENT. [00-35962]

11/26/02 Filed order (Pamela A. RYMER, M. M. McKEOWN, Ronald M. GOULD,): ...The petition for rehearing and the petition for rehearing en banc are DENIED. [00-35962]

5/23/03 Received notice from Supreme Court, petition for certiorari GRANTED on 5/19/03. Supreme Court No. 02-1315

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA DAVEY, Plaintiff, v. GOVERNOR GARY LOCKE, individually and in his official capacity; MARCUS S. GASPARD, individually, and in his official capacity as Executive Director of the Higher Education Coordinating Board; BOB CRAVES, individually, and in his official capacity as Chiar of the Higher Education Coordinating Board; JOHN KLACIK, individually, and in his official capacity as Assocaite Director of the Higher Education Coordinating Board, Defendants.	NO. C00-0061 VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES JURY DEMAND

Comes now the plaintiff, JOSHUA DAVEY, and sues Defendants for violating his federal and state constitutional rights by denying him eligibility for the State of Washington's Promise Scholarship solely because he is pursuing a degree in pastoral studies.

I. JURISDICTION

1. This action arises under the United States Constitution, particularly the First and Fourteenth

Amendments; under federal law, particularly 28 U.S.C. § 2201 and 42 U.S.C. §§ 1983 and 1988; and under the Constitution of the State of Washington, particularly Article I, Sections 5 & 11.

2. This Court is vested with original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331, 1343 and 1367, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims arising under the Washington Constitution.

3. This Court is vested with authority to grant the requested declaratory judgment by operation of 28 U.S.C. §§ 2201, *et seq.*

4. This Court is authorized to issue the requested injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure.

5. This Court is authorized to award the requested damages pursuant to 28 U.S.C. [sic] 1343(4).

6. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988.

II. VENUE

7. Venue is proper in the United States District Court for the Western District of Washington under 28 U.S.C. § 1391(b), in that a substantial part of the events giving rise to the claim occurred within the district.

III. IDENTIFICATION OF PLAINTIFF

8. Plaintiff Joshua Davey is an [sic] nineteen year old resident of the State of Washington, King County, and the City of Kirkland.

9. Mr. Davey is a student at Northwest College in the City of Kirkland.

10. Mr. Davey is majoring in Pastoral Ministries and Business Management and Administration.

11. Mr. Davey has chosen Pastoral Ministries as his major pursuant to his sincerely held religious beliefs.

IV. IDENTIFICATION OF DEFENDANTS

12. Defendant Governor Gary Locke is governor of the State of Washington and is being sued in his individual and official capacities. Upon information and belief, Governor Locke resides in Olympia, Washington.

13. Marcus S. Gaspard is the Executive Director of the State of Washington's Higher Education Coordinating Board and is being sued in his individual and official capacities. Upon information and belief, Mr. Gaspard resides in Puyallup, Washington.

14. Bob Craves is the Chair of the State of Washington's Higher Education Coordinating Board and is being sued in his individual and official capacities. Upon information and belief, Mr. Craves resides in Redmond, Washington.

15. John Klacik is the Associate Director of the State of Washington's Higher Education Coordinating Board and is being sued in his individual and official capacities. Upon information and belief, Mr. Klacik resides in Olympia, Washington.

V. FACTUAL ALLEGATIONS

16. Mr. Davey learned of the State of Washington's Promise Scholarship as a high school senior in 1999.

17. The Promise Scholarship subsidizes the post-secondary education expenses of Washington residents coming from low and middle-income families, and who graduated from high school in the top 10 percent of their class.

18. Any Washington resident meeting these criteria and enrolled in an accredited public or private post-secondary institution within Washington qualifies for the scholarship.

19. The Promise Scholarship awards up to $1,585 per academic year through June 30, 2001. The actual amount of the scholarship varies by the number of recipients.

20. In 1999, the amount was $1,125 per year.

21. Students enrolled in private institutions receive the funds directly from the state via a warrant. The warrant is made out to the recipient and sent to the institution to confirm enrollment. Once enrollment is confirmed, the institution gives the warrant to the student.

22. The student may expend the Promise Scholarship funds on any education-related expense.

23. Selection of the institution that will receive the Promise Scholarship funds is entirely the private choice of the recipient.

24. Mr. Davey qualified for the scholarship under the neutral financial and academic criteria, and made timely application for the scholarship.

25. Mr. Davey's sincerely held religious beliefs require him to prepare for the ministry through studying theology.

26. In August, 1999, the Executive Director of the Washington State Higher Education Coordinating Board ("HECB"), Marcus S. Gaspard, notified Mr. Davey that he was eligible for the scholarship.

27. That same month, Mr. Davey enrolled at Northwest College with a double major in Pastoral Ministries and Business Management/ Administration.

28. Northwest is a private Christian college in Kirkland, Washington, that offers degrees in both religious and secular fields of study.

29. In October, 1999, Mr. Davey received a certificate and a letter from the Governor, certifying that he had been awarded the scholarship in the amount of $1,125 for the 1999-2000 academic year, and for an amount yet to be determined for 2000-2001.

30. Neither the Governor, nor any other official, advised Mr. Davey that there was any restriction on his choice of school or major, other than the requirement that the school be an accredited Washington school.

31. On October 28, 1999, the director of financial aid at Northwest, Lana Walter, told Mr. Davey that, according to new information from the state, students majoring in theology related fields were ineligible for the Washington Promise Scholarship.

32. Ms. Walter had received a letter from John Klacik, Associate Director of the HECB, dated October 12, 1999, that stated Defendants' new policy as follows: "students who are pursuing a degree in theology are not eligible to receive any state-funded student financial aid, including the new Washington Promise Scholarship." (hereinafter, the "Policy") (attached as "Exhibit A").

33. The letter also stated that future Payment Request Forms would include a certification that scholarship recipients are not pursuing religious studies.

34. Upon information and belief, a check or warrant made out to Mr. Davey for the fall, 1999 semester had already been received by Northwest College.

35. Mr. Davey did not receive this check or warrant or any other funding under the Promise Scholarship program because he was majoring in Pastoral Studies.

36. If Mr. Davey had certified in writing that he would not pursue a theology major, he would have been given the scholarship check.

37. Mr. Davey did not change his major and sign the certificate because it would have violated his sincerely held religious beliefs to do so.

38. Upon information and belief, in addition to Mr. Davey, three other Northwest students who were eligible for the Promise Scholarship decided to pursue a degree in theology.

39. Upon information and belief, two of these students changed their major and obtained the scholarship.

40. Mr. Davey and one other Northwest student would not change their major and lost the scholarship.

41. Mr. Davey's decision not to certify that he was not majoring in theology is expressive conduct intended to affirm his faith and convey his disapproval of the state's policy of religious discrimination.

42. Defendants' knew or should have known that their discrimination against theology majors like Mr. Davey violates the fundamental rights of free exercise, free speech, freedom of association, due process, and equal protection that are protected by the United States and Washington Constitutions.

VI. ALLEGATIONS OF LAW

43. All alleged acts of the Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color and pretense of state law, including the statutes, regulations, customs, policies and usages of the State of Washington.

44. Mr. Davey has no adequate or speedy remedy at law to correct or redress the deprivations of his federal and state rights by Defendants.

45. Unless and until the enforcement of the Defendants' Policy prohibiting Promise Scholarship students from studying theology is enjoined, Mr. Davey will suffer and continue to suffer irreparable injury to his federal and state rights.

VII. FIRST CLAIM FOR RELIEF

Violation of the Free Exercise Clause of the First Amendment to the United States Constitution

46. Plaintiff realleges and incorporates herein by reference ¶¶ 1-45 and does further allege as follows:

47. Defendants, through their Policy, burden the free exercise of religion as guaranteed by the First Amendment to the United States Constitution.

48. The Policy, on its face and as interpreted and enforced by the Defendants, burdens Mr. Davey's free exercise right to study theology and pursue a career in the ministry in accordance with his sincerely held religious beliefs.

49. In order to qualify for the Promise Scholarship, Mr. Davey must give up his religious belief to study theology.

50. Defendants discriminate against religious students because only students studying theology are ineligible for the Promise Scholarship.

51. Defendants have no compelling interest in discriminating only against students desiring to study theology in determining eligibility for Promise Scholarships.

52. Defendants' Policy thus constitutes a violation of Plaintiff's rights under the Free Exercise Clause of the First Amendment to the United States Constitution as incorporated and applied to state action under the Fourteenth Amendment because it singles out religious individuals for discriminatory treatment and conditions a government benefit on the forfeiture of fundamental rights.

53. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

VIII. SECOND CLAIM FOR RELIEF

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

54. Plaintiff realleges and incorporates by reference ¶¶ 1-53 and does further allege as follows:

55. The Promise Scholarship is neutrally available to post-secondary education students who are Washington residents, come from low and middle-income families, and graduated from high school in the top 10 percent of their class.

56. Only students pursuing a degree in theology are ineligible for the scholarship, even though they meet the academic and income level requirements.

57. Students similarly situated to Mr. Davey, excepting only that they are not studying theology, are eligible for the Promise Scholarship and have received funding under the scholarship program.

58. Mr. Davey has been treated disparately by Defendants from similarly situated students.

59. The Defendants have no compelling interest in discriminating only against students desiring to study theology in determining eligibility for Promise Scholarships.

60. Defendants' denial to Plaintiff of access to the same neutral government benefits provided other similarly situated students pursuing secular degrees, constitutes a violation of the Plaintiff's equal protection rights as guaranteed by the Fourteenth Amendment to the United States Constitution.

61. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

IX. THIRD CLAIM FOR RELIEF

Violation of the Establishment Clause of the First Amendment to the United States Constitution

62. Plaintiff realleges and incorporates by reference ¶¶ 1-61 and does further allege as follows:

63. The Defendants' Policy is hostile toward, and inhibits, Mr. Davey's particular religious beliefs and exercise.

64. The Establishment Clause affirmatively mandates that Defendants cannot treat Mr. Davey as a second-class citizen merely because he is pursuing his religious conviction to study theology.

65. The Defendants' Policy, denying Mr. Davey access to a government benefit in the form of an education scholarship, on the basis of his religious beliefs and practices, conveys a governmental message that Mr. Davey is an outsider and not a full member of the community, and entangles the State of Washington with religion, both of which contravene the First Amendment Establishment Clause as incorporated and applied to state action under the Fourteenth Amendment.

66. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

X. FOURTH CLAIM FOR RELIEF

Violation of the Free Speech Clause of the First Amendment to the United States Constitution

67. Plaintiff realleges and incorporates by reference ¶¶ 1-66 and does further allege as follows:

68. Defendants' Policy discriminates against the free expression of religious ideas, values, thoughts, viewpoints and opinion on the basis of the content of such expression.

69. The Policy, on its face and as interpreted and enforced by the Defendants, denies eligibility only to students who would otherwise be eligible for the Promise Scholarship, based solely on the content and viewpoint of their educational speech.

70. Mr. Davey's decision to pursue a theological degree is expressive conduct protected by the First Amendment.

71. Mr. Davey has been unconstitutionally denied equal access to government funds generally available to similarly situated students based upon the religious content of his course of study.

72. Mr. Davey has a right to receive the information provided by Northwest's theology program and his choice of education is expressive conduct protected by the First Amendment.

73. Defendants have created a limited public forum by subsidizing private speech through a generally applicable, neutral funding scheme in the form of the Promise Scholarship.

74. Defendants are discriminating on the basis of content and viewpoint when they fund only those who promise not to study for a degree with an explicit religious viewpoint.

75. Defendants have no compelling interest in discriminating only against students desiring to study theology in determining eligibility for Promise Scholarships.

76. Defendants' Policy interferes with free speech protected under the First Amendment to the United States Constitution because it promotes and protects virtually all educational speech while denying assistance to, and thereby inhibiting, the exercise of religious educational speech.

77. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

XI. FIFTH CLAIM FOR RELIEF

Violation of the Right of Freedom of Association Guaranteed by the First Amendment to the United States Constitution

78. Plaintiff realleges and incorporate [sic] by reference ¶¶ 1-77 and does further allege as follows:

79. The desire to associate with those who study and teach theology is protected by the right to freedom of association.

80. Defendants have conditioned eligibility for the Promise Scholarship and the benefits associated with this scholarship upon the forfeiture of the right of freedom of association.

81. Defendants have therefore violated the First Amendment to the United States Constitution.

82. The Defendants have no compelling interest in discriminating only against students desiring to study theology in determining eligibility for Promise Scholarships.

83. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

XII. SIXTH CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

84. Plaintiff realleges and incorporates herein by reference ¶¶ 1-83 and does further allege as follows:

85. The Policy is unconstitutionally vague. It is impossible to determine what is covered by its prohibitions.

86. "Pursue" is not defined by the Defendants or their Policy.

87. "Theology" is not defined by the Defendants or their Policy.

88. Persons of common intelligence must necessarily guess at the meaning, scope, and application of the terms "pursue" and "theology" as contained in Defendants' Policy.

89. The Policy lacks sufficient standards and is subject to discriminatory enforcement.

90. Defendants' use of this Policy to deny the Plaintiff eligibility for the Promise Scholarship is arbitrary and capricious.

91. The Policy violates the Due Process rights of the Plaintiff as guaranteed by the Fourteenth Amendment to the United States Constitution.

92. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

XIII. SEVENTH CLAIM FOR RELIEF

Violation of the Right of Free Exercise of Religion Guaranteed by the Washington State Constitution, Article I, Section 11

93. Plaintiff realleges and incorporates herein by reference ¶¶ 1-92 and does further allege as follows:

94. Defendants, through their Policy, burden the free exercise of religion as guaranteed by Article I, Section 11 of the Washington Constitution.

95. The actions of the Defendants place a burden on Mr. Davey's free exercise right to study theology and pursue a career in the ministry in accordance with sincerely held religious beliefs.

96. In order to qualify for the Promise Scholarship, Mr. Davey must give up his religious belief to study theology.

97. Defendants single out religious students for discrimination because only students studying theology are ineligible for the Promise Scholarship.

98. Defendants have no compelling interest in discriminating only against students desiring to study religion in determining eligibility for Promise Scholarships.

99. Defendants' Policy thus constitutes a violation of Plaintiff's rights under Article I, Section 11, of Washington's Constitution because it singles out religious individuals for discriminatory treatment and conditions a government benefit on the forfeiture of fundamental rights.

100. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

XIV. EIGHTH CLAIM FOR RELIEF

Violation of the Right of Free Speech Guaranteed by the Washington State Constitution, Article I, Section 5

101. Plaintiff realleges and incorporates by reference ¶¶ 1-100 and does further allege as follows:

102. Defendants' Policy discriminates against the free expression of religious ideas, values, thoughts, viewpoints and opinion on the basis of the content of such expression.

103. This Policy, as interpreted and enforced by the Defendants, denies eligibility to students who would otherwise be eligible for the Promise Scholarship, based solely on the content and viewpoint of their educational speech.

104. Mr. Davey's decision to pursue a theological degree is expressive conduct protected by Article I, Section 5.

105. Mr. Davey has a right to receive the information provided by Northwest's theology program and his choice of education is expressive conduct protected by the First Amendment.

106. Defendants have created a limited public forum by subsidizing private speech through a generally applicable, neutral funding scheme in the form of the Promise Scholarship.

107. Defendants are discriminating on the basis of content and viewpoint when they fund only those

who promise not to study for a degree with an explicit religious viewpoint.

108. Defendants have no compelling interest in discriminating only against students desiring to study theology in determining eligibility for Promise Scholarships.

109. Defendants' Policy interferes with free speech protected by Article I, Section 5 of the Washington Constitution insofar as it promotes and protects virtually all educational speech while denying assistance to, and thereby inhibiting, the exercise of religious educational speech.

110. WHEREFORE, Plaintiff respectfully prays that the Court grant the equitable and legal relief set forth hereinafter in the prayer for relief.

XV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court enter a declaratory judgment stating that Defendants' policy of denying Promise Scholarship eligibility to those students who are pursuing a degree in theology is a facially unconstitutional violation of the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 5 & 11 of the Constitution of the State of Washington;

B. That this Court enter a declaratory judgment stating that the Defendants' application of the Policy to deny Promise Scholarship eligibility to Plaintiff because of the religious beliefs and the viewpoint and content of Plaintiff's educational speech violates the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution, as well as Article I, Sections 5 & 11 of the Constitution of the State of Washington;

C. That this Court enjoin Defendants from unconstitutional and discriminatory exclusion of Plaintiff from eligibility for the Promise Scholarship;

D. That this Court award damages in an amount to be determined by the finder of fact in accordance with the proof, plus interest at the legal rate until paid;

E. That this Court award Plaintiff's costs and expenses of this action, including a reasonable attorneys fee award, in accordance with 42 U.S.C. § 1988 and other applicable law;

F. That this Court adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment;

G. That this Court grant such other and further relief as the Court deems equitable, just, and proper;

H. That this Court retain jurisdiction of this matter for the purpose of enforcing the Court's Orders.

Respectfully submitted this 12th day of January, 1999

//s//
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* Applications to the bar of this Court submitted concurrently with this Complaint.

Verification of Complaint

I, Joshua Davey, a citizen of the United States and a resident of Washington, have read the foregoing Verified Complaint for Injunctive and Declaratory Relief, and declare under penalty of perjury that the foregoing Complaint is true and correct.

Date: January 10, 2000 //s//
Joshua Davey

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DEFENDANTS' ANSWER TO VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

[Caption Omitted In Printing]

Defendants Governor Gary Locke, Marcus S. Gaspard, Bob Craves, and John Klacik (hereinafter "defendants") in answer to plaintiff's Verified Complaint For Declaratory and Injunctive Relief and Damages (hereinafter "Complaint"), admit, deny, and allege as follows:

I. JURISDICTION

1. Defendants deny the allegations contained in paragraph 1. of plaintiff's Complaint.

2. Defendants deny the allegations contained in paragraph 2. of plaintiff's Complaint.

3. Defendants deny the allegations contained in paragraph 3. of plaintiff's Complaint.

4. Defendants deny the allegations contained in paragraph 4. of plaintiff's Complaint.

5. Defendants deny the allegations contained in paragraph 5. of plaintiff's Complaint.

6. Defendants deny the allegations contained in paragraph 6. of plaintiff's Complaint.

II. VENUE

7. Defendants admit the allegations contained in paragraph 7. of plaintiff's Complaint.

8. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8. of plaintiff's Complaint and, therefore, deny the same.

9. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9. of plaintiff's Complaint and, therefore, deny the same.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10. of plaintiff's Complaint and, therefore, deny the same.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11. of plaintiff's Complaint and, therefore, deny the same.

IV. IDENTIFICATION OF DEFENDANTS

12. Defendants admit the allegations contained in paragraph 12. of plaintiff's Complaint.

13. Defendants admit the allegations contained in paragraph 13. of plaintiff's Complaint.

14. Defendants admit the allegations contained in paragraph 14. of plaintiff's Complaint.

15. Defendants admit the allegations contained in paragraph 15. of plaintiff's Complaint.

V. FACTUAL ALLEGATIONS

16. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16. of plaintiff's Complaint and, therefore, deny the same.

17. Defendants admit the allegations contained in paragraph 17. of plaintiff's Complaint.

18. Defendants deny the allegations contained in paragraph 18. of plaintiff's Complaint.

19. Defendants admit the allegations contained in paragraph 19. of plaintiff's Complaint.

20. Defendants deny the allegation contained in paragraph 21. [sic] of plaintiff's Complaint that at all times during 1999, the amount was $1,125.

21. Defendants admit the allegations contained in paragraph 21. of plaintiff's Complaint.

22. Assuming by this allegation that plaintiff is alleging that "education-related expense" means tuition, fees, room and board, books and supplies, and other miscellaneous personal expenses, this allegation is admitted; otherwise defendants deny the allegations contained in paragraph 22. of plaintiff's Complaint.

23. Defendants deny the allegations contained in paragraph 23. of plaintiff's Complaint. The student receives funding and is thereafter free to select an eligible institution.

24. Defendants admit the allegations contained in paragraph 24. of plaintiff's Complaint.

25. Defendants are without knowledge or information sufficient to form a belief as to the truth of

the allegations contained in paragraph 25. of plaintiff's Complaint and, therefore, deny the same.

26. Defendants admit the allegations contained in paragraph 26. of plaintiff's Complaint.

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27. of plaintiff's Complaint and, therefore, deny the same.

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28. of plaintiff's Complaint and, therefore, deny the same.

29. Defendants admit the allegations contained in paragraph 29. of plaintiff's Complaint.

30. Defendants deny the allegations contained in paragraph 30. of plaintiff's Complaint. In addition, plaintiff is presumed to know the law; to wit, the provisions of RCW 28B.10.814 which reads: "No aid shall be awarded to any student who is pursuing a degree in theology."

31. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31. of plaintiff's Complaint and, therefore, deny the same.

32. Defendants deny the allegation contained in paragraph 32. of plaintiff's Complaint that defendants stated a "new" policy. The policy referred to is found in RCW 28B.10.814, referred to above, enacted in 1969.

33. Defendants deny that such language alleged in paragraph 33. of plaintiff's Complaint appears in Exhibit A, but states that said exhibit speaks for itself.

34. Defendants deny the allegations contained in paragraph 34. of plaintiff's Complaint.

35. Defendants deny the allegations contained in paragraph 35. of plaintiff's Complaint.

36. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 36. of plaintiff's Complaint and, therefore, deny the same.

37. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 37. of plaintiff's Complaint and, therefore, deny the same.

38. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38. of plaintiff's Complaint and, therefore, deny the same.

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39. of plaintiff's Complaint and, therefore, deny the same.

40. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40. of plaintiff's Complaint and, therefore, deny the same.

41. Defendants deny the allegations contained in paragraph 41. of plaintiff's Complaint.

42. Defendants deny the allegations contained in paragraph 42. of plaintiff's Complaint.

VI. ALLEGATIONS OF LAW

43. Defendants deny the allegations contained in paragraph 43. of plaintiff's Complaint.

44. Defendants deny the allegations contained in paragraph 44. of plaintiff's Complaint.

45. Defendants deny the allegations contained in paragraph 45. of plaintiff's Complaint.

VII. FIRST CLAIM FOR RELIEF

Violation of the Free Exercise Clause of the First Amendment to the United States Constitution

46. Answering paragraph 46. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 45., above, and incorporates the same by this reference as if fully set forth herein.

47. Defendants deny the allegations contained in paragraph 47. of plaintiff's Complaint.

48. Defendants deny the allegations contained in paragraph 48. of plaintiff's Complaint.

49. Defendants deny the allegations contained in paragraph 49. of plaintiff's Complaint.

50. Defendants deny the allegations contained in paragraph 50. of plaintiff's Complaint.

51. Defendants deny the allegations contained in paragraph 51. of plaintiff's Complaint.

52. Defendants deny the allegations contained in paragraph 52. of plaintiff's Complaint.

53. Paragraph 53. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

VIII. SECOND CLAIM FOR RELIEF

Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

54. Answering paragraph 54. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 53. above and incorporates the same by this reference as if fully set forth herein.

55. Defendants admit the allegations contained in paragraph 55. of plaintiff's Complaint.

56. Defendants deny the allegations contained in paragraph 56. of plaintiff's Complaint.

57. Defendants deny the allegations contained in paragraph 57. of plaintiff's Complaint.

58. Defendants deny the allegations contained in paragraph 58. of plaintiff's Complaint.

59. Defendants deny the allegations contained in paragraph 59. of plaintiff's Complaint.

60. Defendants deny the allegations contained in paragraph 60. of plaintiff's Complaint.

61. Paragraph 61. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

IX. THIRD CLAIM FOR RELIEF

Violation of the Establishment Clause of the First Amendment to the United States Constitution

62. Answering paragraph 62. of plaintiff's Complaint, defendants reallege its answers to

paragraphs 1. through 61. above and incorporates the same by this reference as if fully set forth herein.

63. Defendants deny the allegations contained in paragraph 63. of plaintiff's Complaint.

64. Defendants deny the allegations contained in paragraph 64. of plaintiff's Complaint.

65. Defendants deny the allegations contained in paragraph 65. of plaintiff's Complaint.

66. Paragraph 66. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

X. FOURTH CLAIM FOR RELIEF

Violation of the Free Speech Clause of the First Amendment to the United States Constitution

67. Answering paragraph 6. [sic] of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 66. above and incorporates the same by this reference as if fully set forth herein.

68. Defendants deny the allegations contained in paragraph 68. of plaintiff's Complaint.

69. Defendants deny the allegations contained in paragraph 69. of plaintiff's Complaint.

70. Defendants deny the allegations contained in paragraph 70. of plaintiff's Complaint.

71. Defendants deny the allegations contained in paragraph 71. of plaintiff's Complaint.

72. Defendants deny the allegations contained in paragraph 72. of plaintiff's Complaint.

73. Defendants deny the allegations contained in paragraph 73. of plaintiff's Complaint.

74. Defendants deny the allegations contained in paragraph 74. of plaintiff's Complaint.

75. Defendants deny the allegations contained in paragraph 75. of plaintiff's Complaint.

76. Defendants deny the allegations contained in paragraph 76. of plaintiff's Complaint.

77. Paragraph 77. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

XI. FIFTH CLAIM FOR RELIEF

Violation of the Right of Freedom of Association Guaranteed by the First Amendment to the United States Constitution

78. Answering paragraph 78. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 77. above and incorporates the same by this reference as if fully set forth herein.

79. Defendants deny the allegations contained in paragraph 79. of plaintiff's Complaint.

80. Defendants deny the allegations contained in paragraph 80. of plaintiff's Complaint.

81. Defendants deny the allegations contained in paragraph 81. of plaintiff's Complaint.

82. Defendants deny the allegations contained in paragraph 82. of plaintiff's Complaint.

83. Paragraph 83. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the

extent said prayer constitutes a material allegation, it is denied.

XII. SIXTH CLAIM FOR RELIEF

Violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution

84. Answering paragraph 84. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 83. above and incorporates the same by this reference as if fully set forth herein.

85. Defendants deny the allegations contained in paragraph 85. of plaintiff's Complaint.

86. Defendants deny the allegations contained in paragraph 86. of plaintiff's Complaint.

87. Defendants deny the allegations contained in paragraph 87. of plaintiff's Complaint.

88. Defendants deny the allegations contained in paragraph 88. of plaintiff's Complaint.

89. Defendants deny the allegations contained in paragraph 89. of plaintiff's Complaint.

90. Defendants deny the allegations contained in paragraph 90. of plaintiff's Complaint.

91. Defendants deny the allegations contained in paragraph 91. of plaintiff's Complaint.

92. Paragraph 92. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

XIII. SEVENTH CLAIM FOR RELIEF

Violation of the Right of Free Exercise of Religion Guaranteed by the Washington State Constitution, article I, section 11

93. Answering paragraph 93. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 92. above and incorporates the same by this reference as if fully set forth herein.

94. Defendants deny the allegations contained in paragraph 94. of plaintiff's Complaint.

95. Defendants deny the allegations contained in paragraph 95. of plaintiff's Complaint.

96. Defendants deny the allegations contained in paragraph 96. of plaintiff's Complaint.

97. Defendants deny the allegations contained in paragraph 97. of plaintiff's Complaint.

98. Defendants deny the allegations contained in paragraph 98. of plaintiff's Complaint.

99. Defendants deny the allegations contained in paragraph 99. of plaintiff's Complaint. It is further specifically denied that the allegations under this Claim for Relief in any way raise proper federal issues or confer in any way jurisdiction over the State of Washington or any other named State officer in their official capacity in this or any other federal court.

100. Paragraph 100. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

XIV. EIGHTH CLAIM FOR RELIEF

Violation of the Right of Free Speech Guaranteed by the Washington State Constitution, article I, section 5

101. Answering paragraph 101. of plaintiff's Complaint, defendants reallege its answers to paragraphs 1. through 100. above and incorporates the same by this reference as if fully set forth herein.

102. Defendants deny the allegations contained in paragraph 102. of plaintiff's Complaint.

103. Defendants deny the allegations contained in paragraph 103. of plaintiff's Complaint.

104. Defendants deny the allegations contained in paragraph 104. of plaintiff's Complaint.

105. Defendants deny the allegations contained in paragraph 105. of plaintiff's Complaint.

106. Defendants deny the allegations contained in paragraph 106. of plaintiff's Complaint.

107. Defendants deny the allegations contained in paragraph 107. of plaintiff's Complaint.

108. Defendants deny the allegations contained in paragraph 108. of plaintiff's Complaint.

109. Defendants deny the allegations contained in paragraph 109. of plaintiff's Complaint. It is further specifically denied that the allegations under this Claim for Relief in any way raise proper federal issues or confer in any way jurisdiction over the State of Washington or any other named State officer in their official capacity in this or any other federal court.

110. Paragraph 110. of plaintiff's Complaint is a prayer for relief to which no answer is due. To the extent said prayer constitutes a material allegation, it is denied.

By way of Further Answer and Affirmative Defenses, defendants allege:

1. That the plaintiff has failed to state a claim upon which relief may be granted.

2. That the defendants, and each of them, are immune from liability for damages under the doctrine of qualified immunity because their conduct did not violate clearly established law.

3. That defendants Locke, as Governor of the State of Washington, and Craves, as Chair of the Higher Education Coordinating Board, did not personally participate in any alleged deprivation of plaintiff's constitutional rights and are not liable in respondeat superior for the acts or omissions of others.

4. That the defendants at all times acted in good faith in the performance of their duties and are, therefore, immune from suit for the matters charged in plaintiff's Complaint.

5. That the State of Washington is the only real defendant in interest and the Eleventh Amendment of the United States Constitution bars this action.

6. That the injuries and damages, if any, claimed by plaintiff were proximately caused or contributed to by the fault of plaintiff.

7. That the plaintiff, on information and belief, was not required to declare a major for his first two years of college, which coincides with his eligibility to receive the subject Promise Scholarship, and that in declaring a major in theology, his sole purpose was to create a case or controversy, for purposes of litigation only.

8. That if the plaintiff suffered any damages, recovery therefore is barred by plaintiff's failure to mitigate said damages

9. That, upon information and belief, Northwest Colleges may be pervasively sectarian.

10. That the plaintiff's Complaint raises substantial questions of state law, which involve sensitive matters of substantial public import to the State of Washington and which may be determinative of any such issues of federal law as the plaintiff may have raised. This Court should, therefore, abstain.

WHEREFORE, having fully answer and defended affirmatively, defendants pray:

1. That plaintiff's Complaint be dismissed with prejudice and that the plaintiff takes nothing by his Complaint.

2. Alternatively, that this Court abstain from determining any and all issues raised by the Complaint until the State courts have had an adequate opportunity to determine the substantial issues of State law involved.

3. For an award of costs and attorney's fees as authorized.

4. For such other and further relief as the Court deems appropriate.

DATED this 1st day of February, 2000.

CHRISTINE O. GREGOIRE
Attorney General

//s//
W. HOWARD FISCHER,
WSBA #6142
Senior Assistant Attorney General
(360) 586-2789
Attorneys for Defendants

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF JOSHUA DAVEY IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

[Caption Omitted In Printing]

I, Joshua Davey, do hereby swear and depose as follows:

1. I am the plaintiff in this lawsuit and submit this declaration in support of my motion for a preliminary injunction.

2. Where I have referenced a document in this declaration, I have attached to this Declaration a true and correct copy of the cited document.

3. I am a resident of Spokane, Washington and am currently living in Kirkland, Washington while I attend college.

4. I am a Christian, and am committed to living out my faith in every aspect of my life. I believe that the Bible teaches that all Christians are to serve God throughout their lives. For me, this means expressing my faith through full-time service in the ministry. Because of this religious belief, I have planned for many years to attend a Bible college and to prepare myself through that college training for a lifetime of ministry, specifically as a church pastor. My religious beliefs are the only reason for me to seek a college degree.

5. In May, 1999, I was a senior at University High School in Spokane, Washington. During that month, I learned of the "Washington Promise Scholarship" ("Scholarship [sic]) that would award certain students about $1500 each year for the first two years of college. The funds could be applied to any education related expenses.

6. A student would be entitled to the Scholarship if (a) his or her academic rank was in the top ten percent of the graduating class; (b) he or she had a family income that was below 135% of the [sic] Washington's median income; and (c) he or she enrolled in a public or private school within Washington that offered an accredited, four-year post-secondary education, or in certain Washington public or private two-year institutions. This information is summarized in the 1999 Scholarship Overview, dated May, 1999. (Attached as Exhibit A).

7. When I graduated from University High School, my academic rank was within the top ten percent of my class, and my family income was less than 135% of the median income for a four-person family in Washington.

8. I chose to attend Northwest College ("Northwest") in Kirkland, Washington. Northwest is a private, four year college.

9. My reasons for choosing Northwest were several: (a) It offered a course of study that would allow me to fulfill my religious convictions regarding becoming a minister. (b) It offered the course of study at a very reasonable cost. I had compared costs with other colleges offering similar majors, and found that in most cases, Northwest was several

thousand dollars less expensive for a comparable course of study, for each academic year. (c) Northwest was within Washington and relatively close to my hometown. (d) Its denominational affiliation was similar to the Foursquare Denomination, of which I am a member. Northwest is affiliated with the Assemblies of God Denomination, which holds tenets of faith very similar to those held by the Foursquare Denomination.

10. According to Northwest's *Academic Catalog*, the college is accredited by the Northwest Association of Schools and Colleges; is approved by the State of Washington Board of Education to prepare elementary and secondary teachers for state certification; and is listed in the current bulletin, "*Accredited Higher Education Institutions*," published by the U.S. Office of Education. Please refer to Exhibit B, at Declaration pp. 13-14, for accreditation information. Because I met the academic and financial criteria, and because I had planned to attend Northwest, which was an accredited four-year college within Washington, I applied for the Scholarship before the September 1, 1999 deadline for applications.

11. Shortly thereafter, I received a letter from Marcus S. Gaspard, dated August 21, 1999. (Attached as Exhibit C). Mr. Gaspard is the Executive Director of the Washington Higher Education Coordinating Board ("HECB"). In that letter, Mr. Gaspard told me that I was eligible to receive the Scholarship.

12. Mr. Gaspard also stated in his August 21, 1999 letter that the maximum award was $1,584 for

the 1999-2000 academic year, but that the value of the award would ultimately be based on the total funding available and the number of qualifying students.

13. In August, 1999, I enrolled at Northwest and chose a course of study that I believed would best prepare me to be a Christian minister.

14. Specifically, I decided upon a double major: Pastoral Ministries and Business Management/Administration. I believed that this combination of courses would best prepare me for the complex management and spiritual tasks that comprise contemporary Christian ministry. Under this double major, I have studied or will study courses in a multitude of disciplines: humanities, science, mathematics, social science, business, finance, computer applications, religion, Biblical studies, and pastoral ministry.

15. The courses I have attended to date at Northwest do not appear to proselytize non-believers. Rather, each course, regardless of the discipline involved, is taught from the viewpoint of what Christians believe to be absolute truth, as conveyed in the Bible. This is one of the things that attracted me to Northwest: the opportunity to study our world and our society from the viewpoint of a Biblical worldview.

16. In October, 1999, I received a letter from Governor Gary Locke which was dated September 28, 1999. (Attached as Exhibit D). Governor Locke congratulated me for being selected to receive the Scholarship. He noted that the high cost of tuition prevents many students from attending college, and

said that is why he proposed the Scholarship program to the Legislature.

17. Governor Locke also said that education is the "great equalizer" for our society, and that a "quality education places us all on a more level playing field," regardless of our gender, race, ethnicity, or income. The Governor enclosed a handsome certificate with his letter, which recognized my "outstanding academic achievement" and honored "the valuable contributions" that I will make to the state of Washington. (Attached as Exhibit E). The certificate was presented to me to support my "pursuit of a college education in Washington State." The certificate was signed by Governor Locke.

18. Also in October, 1999, I received from the HECB a "Washington Promise Scholarship Disbursement Information Sheet," dated September 24, 1999. (Attached as Exhibit F). The Information Sheet advised me that the Scholarship would be worth $1,125 for the 1999-2000 academic year, and that the first semester's payment would be $563.

19. The Information Sheet specified that my award would be in the form of a warrant that would be sent to my college. Once my college confirmed my enrollment, it had to pass the warrant on to me. If my enrollment was not confirmed, the warrant had to be returned to the HECB.

20. According to the Information Sheet, it was my choice on how the award would be used, so long as it was spent for "tuition or other educational expense." Northwest was not allowed to automatically deduct anything from the warrant.

21. Just a few days later, on or about October 28, 1999 I met with Lana Walter, Director of Financial Aid at Northwest. Ms. Walter told me that the HECB had recently notified her that students majoring in "theology-related fields" were not eligible for the Scholarship. She told me that all students who were eligible to receive the award must first certify in writing that they were not majoring in theology-related fields. I have attached a copy of the certification form as Exhibit G.

22. Until my meeting with Ms. Walter, I had absolutely no knowledge of any requirement or policy that would prohibit a person who was "pursuing a theology degree" from receiving the Scholarship. No state or school official raised the issue; nor was there any statement on the Scholarship application materials or any other document I had seen as of October 28, 1999.

23. On October 29, 1999, my father, Dan Davey, contacted the American Center for Law and Justice and asked if that organization would be able to assist me.

24. I did not speak with any attorney regarding this matter prior to November 18, 1999.

25. Within a few days of my meeting with Ms. Walter, I obtained from her a copy of a memorandum from John Klacik to "Financial Aid Administrators," dated October 12, 1999, that stated "students who are pursuing a degree in theology are not eligible to receive *any* state-funded student financial aid, including the new Washington Promise Scholarship." (Attached as Exhibit H).

26. When Ms. Walter told me about the HECB's refusal to fund "theology" majors and gave to me Mr. Klacik's October 12, 1999 memorandum, I felt that I was a second-class citizen in the eyes of the state. Somehow, apparently because my religious beliefs require me to pursue a degree in Pastoral Ministries and to eventually become a minister, my academic achievements were no longer worthy of official recognition, nor were my future contributions to the state of Washington worthy of honor.

27. This unexpected, official demand to change my major or lose my funding confronted me with a serious dilemma: Should I change my religious beliefs that required me to study for the ministry? Worse, should I violate my religious belief regarding truthfulness by changing my course of study to a state-approved major, with the intent of switching back to the forbidden major once I had exhausted my Scholarship eligibility? Either way, if I signed that form I would have denied what I believed to be God's direction for my life, and would have had to violate my sincerely held religious beliefs. After much pondering and prayer, I refused to sign.

28. I refused to sign the form because I saw that the state openly discriminated against one class of persons: Religious students who take their faith so seriously that they want to serve their fellow believers and their society through their faith. The people who suffered this official discrimination were like myself: people who express their faith not just within the cloisters of a church, but in all aspects of their lives, including their choice of college and career. When I refused to sign, I meant it as a

statement of protest against the state officials' discriminatory act.

29. I also refused to sign the form because I did not understand what I could or could not study without violating the HECB's requirement that I must not pursue a degree in theology. At Northwest, I could take many theology, Bible, and Christian ministry courses as electives, regardless of the major I declared, and several such courses are required of all students, as shown in Exhibit B, pp. 15-16. Therefore, I was not at all certain that changing my major to another discipline would solve the problem, because there was no definition of what comprised a "theology" degree or what it meant to "pursue" such a degree.

30. I also refused to sign the certificate because I was given a choice to either fully exercise my faith or receive a government benefit for which I qualified under criteria completely unrelated to religion. It seemed to me like the state was simply imposing a back-door tax on religious believers, and I knew that was wrong.

31. I also refused to sign the certificate because I realized that many others [sic] Christians or other religious believers might have to make the same choice, but lacked the courage to resist such coercive discrimination against people of faith. My refusal was a statement of protest on their behalf, as well as mine.

32. Because I refused to certify in writing that I would not pursue a theology degree, I have received no funds whatsoever from the Scholarship, even

though I understood that a check for the award had been received by Northwest.

33. My educational expenses for the 1999-2000 academic year exceed the amount I will receive from other financial aid programs. I had relied upon the Scholarship to pay educational expenses that I would incur during my first two years at college.

34. The impact of losing the Scholarship will be even greater next year, because some of my financial aid for my freshman year will not carry over to the sophomore year.

35. Accordingly, I am having to work more hours than I planned during the first two years, to compensate for the loss of my Scholarship.

36. I am currently employed as a floor assistant at Yarrow Bay Grill. I earn a minimum wage of $6.50 an hour, plus tips which increase my overall hourly compensation to about $14 an hour, before taxes.

37. Thus, to make up the $1,125 Scholarship award that I would have received for the 1999-2000 academic year, I will have to work about an additional 80 hours at $14 ar hour.

38. Northwest recommends that students who work over 25 hours a week should take no more than 13 hours of class credit. Ex. B, p. 23. In the 1999-2000 academic year, I have worked and will continue to work about 25 hours a week. I carried 17 credit hours in the fall, 1999 semester and am carrying 18 hours in the spring, 2000 semester.

39. During the time I am working, I cannot study, attend class, or associate with my fellow believers for worship.

40. The extra time I must work to compensat for the loss of the Scholarship has adversely affected my college studies.

41. The extra time I must work to compensate for the loss of the Scholarship has adversely affected my college studies. [sic]

42. In January, 2000, I received via the United States mail a letter dated January 20, 2000, from Marcus S. Gaspard. (Attached as Exhibit I. [sic]). It gave directions for renewing the Scholarship for the 2000-2001 academic year, and stated that the maximum value of the award for the 2000-2001 academic year was $1641. The exact value will depend upon the number of eligible applicants as of July, 2000. The letter further stated that I "must use" my award by June 30, 2001, and that "according to Washington State Law, no state financial aid shall be awarded to any student pursuing a degree in theology (RCW 28B.10.814)."

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 7, 2000, in Kirkland, Washington.

//s//
JOSHUA DAVEY

Exhibit A

1999 Washington Promise Scholarship

An overview from the Higher Education Coordinating Board - May 1999

The 1999 Legislature and Governor Gary Locke created a new college scholarship program for low- and middle-income students who achieve an excellent academic record throughout their high school careers. For 1999, the scholarship is available to graduating high school students in the top 10% of their senior class who meet certain family income limits. The scholarship will be available this fall and may be renewed for one additional year. There is no guarantee that the scholarships will be available after June 30, 2001. Students should apply for and use these funds prior to June 30, 2001.

Who Is Eligible?

To be eligible you must meet these criteria:

1. Be designated by your high school as in the top 10% of the 1999 graduating senior class.
2. Have a family income that is equal to or less than 135% of the state's median. See the income chart below.

3. Attend an accredited public or private university, college or other accredited post-secondary institution in the state of Washington.

What Are the Income Cutoffs?

To qualify for the monetary award, your family income must be equal to or less than the income cutoffs on this chart. The number of family members means the number of people for whom your parent(s) or guardian(s) provide more than one-half of the support.

Family Size	Adjusted Gross Income	Family Size	Adjusted Gross Income
1	$36,100	5	$80,600
2	$47,200	6	$91,700
3	$58,400	7	$93,800
4	$69,500	Add $2,100 for each additional family member.	

How Much is the Award Worth? Can It Be Renewed?

The value of the award depends on how many eligible students qualify for the scholarship. The maximum award is $1,585 per year. The exact value of this year's award will be determined around mid-September 1999. The scholarship may be renewed for one additional year, but does not extend beyond June 30, 2001.

How Do I Apply? When Will I know if I Qualify?

To apply simply complete the application on the back of this fact sheet and return it to the Higher Education Coordinating Board. We encourage you to return the application as soon as possible, but it

must be received by the **deadline** of *September 1, 1999*. Students who qualify will be notified this fall. The first disbursements will be available during the fall term.

How will my family's income be verified?

The family income must be verified. Please enclose a photocopy of page 1 and page 2 of your parent(s) 1998 federal tax return form (1040/1040A/1040EZ) with the application. If no tax return has been filed, please call the Higher Education Coordinating Board to request an "income verification" form.

For more information:

Higher Education Coordinating Board, 360-753-7801
Governor's Executive Policy Office, 360-902-0577

Exhibit C

[Higher Education Coordinating Board Letterhead]

August 21, 1999

Joshua Davey
10424 E 5th Ave
Spokane, WA 99206-3535

Dear Joshua:

RE: Washington Promise Scholarship Application

Congratulations! On behalf of Governor Gary Locke and the Washington Legislature, I am pleased to inform you that you are eligible to receive the Washington Promise Scholarship.

You may use the scholarship to attend any accredited postsecondary institution in Washington for the 1999-2000 and the 2000-2001 academic years. The scholarship may be used to attend public and private colleges, universities and career training schools. The minimum enrollment to receive the scholarship is six credits or at least a half-time status at the school you attend.

The maximum value of the award will be $1,584 for the 1999-2000 academic year. But because the application period for the scholarship has not yet closed, we will not determine the exact value of the scholarship until late September. We will calculate the value of the award based on the total funds

available and the number of qualifying students. Depending on the number of eligible applicants the award could be less than the maximum.

Once its exact value is established, your scholarship will be disbursed in equal amounts at the beginning of each academic term from fall through spring. The fall disbursement will occur in October. Be prepared to cover all educational costs until the scholarships are disbursed.

If you have questions about the scholarship, disbursements, or eligible schools, please contact us at 1-888-535-0747 or by email at wapromise@hecb.wa.gov. Again, congratulations on your scholarship.

Sincerely,

//s//
Marcus S. Gaspard
Executive Director

MG:ss

Exhibit D

[Office Of The Governor Letterhead]

September 28, 1999

Joshua Davey
10424 E. 5th Avenue
Spokane, WA 99206

Dear Joshua:

Congratulations on your selection as a Washington's Promise Scholarship recipient! I am proud of your outstanding academic achievements and enthusiastic about your promising future.

As we prepare to meet the challenges of the 21st century, individuals increasingly need a college education to earn a living wage. Unfortunately, the high cost of tuition and living expenses prevents many students from attending college. It is why I proposed, and the Legislature funded, Washington's Promise Scholarships. While far from covering all the costs associated with college, these scholarships will help ease the financial burden for many families in our state.

The amount of the Washington's Promise Scholarship for the 1999-2000 school year is $1,125. Your college's financial aid office has received this amount in your name. While our initial goal for the program was to award an amount equal to the cost of community college tuition in our state, more

students qualified for these awards than originally anticipated. As a result, I plan to introduce legislation in January that would increase the size of each scholarship. Next summer, you will be notified of your scholarship amount for the 2000-2001 school year.

Education is the great equalizer in our society. Regardless of gender, race, ethnicity, or income, a quality education places all of us on a more level playing field. I know this from personal experience. I was born into an immigrant family and spent the first six years of my life in public housing. Like you, I worked hard in high school and graduated with honors. I attended college and then law school. My education contributed greatly to my success, and I am personally committed to providing the best possible educational opportunities for the young people of the state of Washington.

Again, congratulations on your outstanding academic achievement. I wish you all the best in your studies and hope you will continue to enjoy learning throughout your life.

Sincerely,

//s//
Gary Locke
Governor

Exhibit F

[Higher Education Coordinating Board Letterhead]

How the Promise Scholarship Will Be Disbursed

The Washington Promise Scholarship is worth $1,125 for the 1999-2000 academic year. One payment will be made per term until completed. The fall term award at a school that enrolls on the quarter system will be $375. The fall term award at a semester school will be $563.

Payments will be made for the fall quarter/semester, the winter quarter, and the spring quarter/semester. There are no disbursements for summer sessions.

In order to receive a payment you must be enrolled for at least six credits (a half-time rate) at an eligible, accredited, institution within the State of Washington. Each participating school and college will have the list of students who are eligible to receive the award. Once the college has confirmed your enrollment, it will request payment of the scholarship from the Higher Education Coordinating Board in Olympia. Payments are made through the student accounts or business office of the college you attend. Schools may request payment of the fall scholarship beginning on October 1, 1999.

If you are attending a public university, community college, or public technical college the school will use the award to pay any remaining tuition or other educational expense you owe to the school. If nothing is owed to the school or if a balance remains

after tuition and such is paid, the school will disburse the remainder directly to you.

If you attend a private four-year college or a private technical school, a warrant from the Higher Education Coordinating Board will be given directly to you by the school after a final check on enrollment. If you choose, you may use the warrant to pay for tuition or other educational expenses, but the school may not automatically deduct anything from the warrant. The warrant must be given to you or returned to the Board.

If you enroll in two schools during the same term you will be able to use the scholarship at only one institution. If you transfer to a different eligible college within Washington for the winter or spring terms the scholarship can be transferred to that school.

If you have questions about the Promise Scholarship or problems with disbursement, please call the Board, in Olympia, at either 1-888-535-0747 (this is a toll free call) or at (360) 753-7801.

Thank you.

Exhibit G

Certification Statement for Electronically Conveyed Payment Requests

Washington Promise Scholarship Program

Send the certification to:

Higher Education Coordinating Board
Washington Promise Scholarship Program
P.O. Box 43430
Olympia, Washington 98504-3430

The Higher Education Coordinating Board must receive this certification before it can release funds based on an electronically transmitted payment request.

DATE: _____

FROM: _____
Name of Financial Aid Administrator or Designee (please print)

SCHOOL: _____ Code _____

- Date the Payment Request Was Submitted _____
- Method of Submission _____ (choose one: email attachment, or Diskette, or FTP)
- Number of Students For Which Payment Was Requested _____

Certification:

These students are eligible for Washington Promise

Scholarship funds according to the following criteria:

A. Each student has been matched and verified as eligible against the list of eligible students provided by the Higher Education Coordinating Board.
B. Each student is enrolled at least at a half-time rate.
C. No student is pursuing a degree in theology.

I hereby certify that the above statement is a true and accurate report of the status of Washington Program Scholarship recipients for the term indicated on the diskette or in the attached email.

_____ _____

Financial Aid Administrator or Designee Signature — Date

Exhibit H

October 12, 1999

TO: Financial Aid Administrators

FROM: John Klacik

SUBJECT: WASHINGTON PROMISE SCHOLARSHIP: DEGREES IN THEOLOGY

Over the past few days, you have received differing messages from me regarding institutional certification of student eligibility for the Washington Promise Scholarship. The first certification included a statement, borrowed from the Educational Opportunity Grant program statute, that Washington Promise Scholarships recipients would not be engaged in various aspects of religious instruction. On Friday, based on staff review of the legislation establishing the Promise Scholarship program and on feedback from some institutions that time did not allow for such a comprehensive certification, we modified the statement, removing that reference.

Based on further review and consultation with the Attorney General's Office, however, I am writing to clarify that students who are pursuing a degree in theology are not eligible to receive *any* state-funded student financial aid, including the new Washington Promise Scholarship. Although the Appropriations Bill creating this program is silent on this issue, the State Constitution is clear regarding the separation

of church and state. We have consistently interpreted this constitutional provision as prohibiting state financial aid funds for students who are pursuing a degree in theology. That prohibition must also be applied to this new program.

A statement certifying that Washington Promise Scholarship recipients are not pursuing a degree in theology will be added to the Payment Request Form.

We apologize for the confusion, and hope that this clarification will be helpful. Please contact me if you have any questions. I can be reached by telephone at [redacted], or by email at [redacted].

Thank you.

Exhibit I

[Higher Education Coordinating Board Letterhead]

January 20, 2000

Dear 1999 Promise Scholarship Recipient:

Enclosed is the renewal application for the Washington Promise Scholarship 2000-2001 academic year. As a 1999 recipient, you are not required to re-qualify for the scholarship or to submit income information, however, you must submit a completed renewal application to receive your scholarship for the second year.

Please return your renewal application to the Higher Education Coordinating Board (HECB) as soon as possible, but no later than **May 1, 2000**.

Your scholarship may be used at any accredited postsecondary institution in the state of Washington, including public and private colleges, universities, and career training schools. The maximum value of the 2000-2001 award is $1641, however the exact value depends on the number of eligible applicants and will be determined in July 2000. As a 1999 graduate, you must use your award by June 30, 2001.

The scholarships are disbursed at the beginning of each academic term, and sent directly to the accredited Washington college you attend. You must attend at least half time each term. The college will request scholarship funds from the HECB after verifying your enrollment. You will receive

payments for fall, winter, and spring quarters, or fall and spring semesters. Also, according to Washington State law, no state financial aid shall be awarded to any student pursuing a degree in theology (RCW 28B.10.814).

Additional program information is available on our website at www.hecb.wa.gov. If you have questions regarding your renewal application, please call us toll free at (888) 535-0747, or contact us by email us [sic] at wapromise@hecb.wa.gov.

Sincerely,

Marcus S. Gaspard
Executive Director

MSG:DL:cs
Enclosure

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF GARY S. MCCALEB IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

[Caption Omitted In Printing]

I, Gary S. McCaleb, do hereby declare and state:

1. I am counsel to the plaintiff in the above captioned action.

2. I have personal knowledge of the matters testified to herein, am over the age of eighteen, and am competent to testify.

3. Attached hereto as Exhibit A is a true and correct copy of the frontispiece and page numbers 173-74, 178, and 199-204 of the *University of Washington General Catalog 1998-2000.* Plaintiff requests that the court take judicial notice of the materials attached in Exhibit A pursuant to Fed. R. Evid. 201.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 8th, 2000, in Scottsdale, Arizona.

//s//
Gary S. McCaleb

Exhibit A

UNIVERSITY OF WASHINGTON

GENERAL CATALOG 1998-2000

UNDERGRADUATE STUDY

GRADUATE STUDY

UNIVERSITY ADMINISTRATION

University Administration

Richard L. McCormick, President
Lee L. Huntsman, Provost and Vice President for Academic Affairs
Weldon E. Ihrig, Executive Vice President
Myron Apilado, Vice President for Minority Affairs
Marilyn B. Dunn, Vice President for Development
Robert G. Edie, Vice President for University Relations
Paul G. Ramsey, Vice President for Medical Affairs
Ronald A. Johnson, Vice President for Computing & Communications
Ernest R. Morris, Vice President for Student Affairs
Wilbur W. Washburn, Executive Director, Admissions and Records

Board of Regents

Mari J. Clack — Daniel J. Evans
William H. Gates — Scott D. Oki
Constance L. Proctor — H. Jon Runstad
Samuel Stroum — Michele (Shelly) Yapp
Cindy Zehnder

Jennefer L. Penfold, Secretary

V'Ella Warren, Treasurer

This publication is available in alternate formats upon request. Contact the Office of Admissions (206) 543-9686.

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* * *

COMPARATIVE RELIGION

RELIG 201 Introduction to World Religions: Western Traditions (5) I&S *Jaffee, Webb, Williams* History of religions, concentrating on religious traditions that have developed west of the Indus. Primary attention to the Semitic religions (Judaism, Christianity, Islam) and to their ancient world background with emphasis on basic conceptual and symbolic structures.

RELIG 202 Introduction to World Religions: Eastern Traditions (5) I&S *Conlon, Cox* History of religions, concentrating on religions that have developed in South Asia and East Asia. Primary attention to Hinduism and Buddhism; other important Asian religions are discussed in relation to them, with emphasis on basic conceptual and symbolic structures.

RELIG 210 Introduction to Judaism (5) I&S *Jaffee* Basic ideas and motifs of Judaism: God, Covenant, Law, Life Cycle (birth, marriage, family life, sexual laws, role of women, death); Cycle of the Year (Sabbath, holidays, festivals); Holy Land, prayer, Messianism.

RELIG 211 Islam (5) VLPA/I&S *Wheeler* Religious and cultural milieu of Arabia before Muhammad; Muhammad's call and struggles to establish the new faith; Quranic content and style; Western and Muslim scholarship and the Quran; place of traditions in the Islamic edifice; Muslim political and religious thought; sources of Muslim religious law;

and modern Muslim movements. In English. Offered: jointly with NEAR E 211.

RELIG 212 Introduction to the Quran (3) VLPA/I&S *Wheeler* Emphasis on the historical context of the Quran, the history of the text, its collection, organization, and interpretation. In English. Offered: jointly with NEAR E 212.

RELIG 220 Introduction to the New Testament (5) VLPA/I&S *Williams* Modern scholarly methods of research and analysis in dealing with New Testament books and their interpretation. Genres of various books (gospel, epistle, sacred history, apocalypse); problems of the relationships among author, material, and intended audience; relationships between theme and image.

RELIG 240 Introduction to the Hebrew Bible: Old Testament (5) VLPA/I&S *Jaffee* Introduction to the Hebrew Bible in English. Results of modern critical studies on the Bible and the ancient Near East. Concentrates on the meaning of Biblical records in their own time and environment. Offered: jointly with NEAR E 240.

RELIG 301 Religious Thought Since the Middle Ages (5) I&S *Webb* Development of religious thought in the West from the Middle Ages to the twentieth century. History of focal ideas: God, man, knowledge, and authority during this period and the relation of changes in these ideas to the ways in which basic issues in religious thought have been conceived. Recommended: RELIG 201.

RELIG 320 Comparative Study of Death (5) I&S Death analyzed from a cross-cultural perspective. Topics include funerary practices, concepts of the

soul and afterlife, cultural variations in grief, cemeter-

[174]

ies as folk art, and medical and ethical issues in comparative context. American death practices compared to those of other cultures. Offered: jointly with ANTH 322.

RELIG 322 The Gospels and Jesus of Nazareth (5) I&S *Williams* Gospel material from early Christianity, including both canonical and noncanonical gospels. Relation of gospels to analogous literature from the Hellenistic-Roman period. Recommended: ENGL 310 or RELIG 220.

RELIG 324 The Emergence of Christianity (5) I&S *Williams* Studies stages in the development of Christianity as a new religion, during the first to fifth centuries CE, as the classical forms and institutions of Christian "orthodoxy" gradually achieved definition, and as this emerging Christian tradition became a dominant cultural and socio-political force. Recommend: HIST 307, RELIG 201, or RELIG 220.

RELIG 327 Eastern Christian Traditions (5) I&S *Webb* Eastern Christian traditions, with principal focus on Eastern Orthodox tradition in Byzantium and Russia from time of the Council of Nicea to the twentieth century. Considers significant differences between eastern and western Christianity and their doctrinal and cultural origins; explores distinctive features of eastern tradition. Recommended: HIST 307 or RELIG 201.

RELIG 350 Buddhism and Society: The Theravada Buddhist Tradition In South and

Southeast Asia (5) I&S *Keyes* Religious tradition of Theravada Buddhism (as practiced in Sri Lanka, Burma, Thailand, Laos, and Cambodia). Variations in ethical orientations developed through Theravada Buddhist ideas. Recommended: RELIG 202 or one eastern religions course. Offered: jointly with ANTH 352.

RELIG 352 Hinduism (5) I&S *Pauwels* Varieties of Hindu religious practice; the diverse patterns of religious through and action among contemporary Hindus. Includes ritual behavior, village Hinduism, tantrism, sadhus, yoga, sects; the major gods and their mythologies, religious art, and the adjustments of Hinduism to modernity. Recommended: RELIG 202 or one South Asian culture course.

RELIG 354 Buddhism (5) I&S *Cox* Buddhism as a religious way and as a way of thinking; the forms of Buddhism known in South Asia (India, Sri Lanka) and those introduced from there to Tibet and other parts of Central Asia. Includes the "Three Jewels" (i.e., the Buddha or Awakened Person, the Teaching [Dharma], and Community [Sangha]) around which Buddhism is traditionally articulated. Recommended: RELIG 202 or one Asian cultures course.

RELIG 380 The Nature of Religion and Its Study (5) I&S *Jaffee, Webb* Study of religion as a general human phenomenon. Manner in which different methods of inquiry (phenomenology, anthropology, sociology, psychology, literary criticism, archaeology, philosophy, theology) illuminate different aspects of religion and help to shape our conceptions of its nature. Recommended: RELIG 201 or RELIG 202. Offered: jointly with CHID 380.

RELIG 399 Study Abroad–Comparative Religion (1-5, max. 15) I&S For participants in study abroad program. Specific course content varies. Courses do not automatically apply to major/minor requirements.

RELIG 400 The Jewish Mystical Tradition (5) I&S *Jaffee* Jewish esoteric thought from antiquity to early modern times. Emergence of Spanish Kabbalah. The thought of Isaac Luria and its immense influence in Jewish history through other movements-specifically the mystical messiah. Sabbetai Sevi, and the rise of Hasidism. Recommended: 201 or 210.

RELIG 405 Scripture In Judaism (5) I&S *Jaffee* Explores the phenomenon of religious interpretation of sacred books by attending to the destiny of the Bible as read within Judaism. Begins with the canonization of the biblical text itself and continues into the rationalist and mystical interpretive innovations of the Middle Ages. Recommended: HIST/SISJE 250, RELIG 201, or RELIG 210.

RELIG 410 Law In Judaic Experience (5) I&S *Jaffee* Place and function of law in Jewish social and personal experience. Discusses the various ideological justifications of the law in biblical and rabbinic literature, examines representative texts, and explores theological reflection on law by medieval and modern thinkers. Recommended: RELIG 201; RELIG 210; RELIG 400 or RELIG 405.

RELIG 415 Modern Jewish Thought (5) I&S *Jaffee* Major trends in Jewish religious thought since the European Enlightenment, focusing on encounters between Judaism and the modern world. Includes Haskalah; varieties of religious reform and

accommodation; Zionism; socialism; the philosophy of Rosenzweig, Buber, and Kaplan; and theological responses to the Holocaust. Recommended: HIST/SISJE 250, HSTEU/SISJE 469, RELIG 201, or RELIG 210.

RELIG 420 The World of the Early Church (5) I&S *Williams* Early Christian church within the context of the Greco-Roman sociopolitical, philosophical, and religious environment. Covers the period from about AD 100 to 300. Christian thinkers and documents studied include both the classical "orthodox" and the "heretical." Recommended: HIST 307, RELIG 220, or RELIG 324.

RELIG 421 The Age of St. Augustine (5) I&S *Williams* Christian church in the fourth and fifth centuries as a major institution in the Roman Empire. Great figures of patristic theology, such as Athanasius, Gregory Nazianzus, Gregory of Nyssa, and Augustine. Recommended: HIST 307, RELIG 320, or RELIG 324.

RELIG 426 Gnosticism and Early Christianity (5) I&S *Williams* Impact of Gnosticism on the development of Christianity and several other religious groups of that period. Readings dating from the first through the third centuries AD.

RELIG 428 Modern Christian Theology (5) I&S *Webb* Modern Protestant and Catholic thought since the nineteenth century: Kierkegaard, Barth, Bultmann, Rahner, Lonergan, and other major figures. Recommended: RELIG 301.

RELIG 430 Scripture In Islam (3) VLPA/I&S *B Wheeler* Examines concept and use of scripture in Islam, with special attention to issues of cannon and

commentary, heavenly books, talismanic uses, and the place of scripture in ritual. In English translation. Offered: jointly with NEAR E 430.

RELIG 432 Ritual and Law In Islam (5) VLPA/I&S Comparative study of Islamic ritual practices and related development of jurisprudence and law. Focus on sacrifice, political and social legal theory, pilgrimage, regulation of the body, and the diversity of contemporary practices. In English. Offered: jointly with NEAR E 432; W.

RELIG 442 Art, Religion, and Politics In the Early Christian Period, 300-700 AD (3) VLPA/I&S *Kartsonis* Evolution of the art of the early Christian period (300-700 AD) in the context of contemporary religious, political, and cultural developments. Recommended: some background in Byzantine art or history. Offered: jointly with ART H 462.

RELIG 443 Art, Religion, and Politics In Byzantium, 700-1453 AD (3) VLPA/I&S *Kartsonis* Evolution of the art of Byzantium (700-1453 AD) in the context of contemporary religious, political, and cultural developments. Recommend: some background in Byzantine art or history. Offered: jointly with ART H 453.

RELIG 445 Greek and Roman Religion (3) VLPA/I&S *Harmon, Langdon* Religion in social life of Greeks and Romans; emphasis on their public rituals and festivals. Priesthoods, personal piety, rituals of purification and healing, and the conflict of religions in the early Roman Empire. Recommended: RELIG 201. Offered: jointly with CLAS 445.

RELIG 449 Religious Movements: The Sociology of Cults and Sects (5) I&S *Stark* Understanding religion, what it is and what it does. Examines the formation of new religious movements, cults, and sects and the conditions under which they succeed or fail. Offered: jointly with SOC 445.

RELIG 452 Topics In the Buddhism of Tibet (3) I&S *Pagel* Topics in the development of Buddhism of Tibet. Includes the relationship between reasoning and religious thought; the concept of a person, the formation of the different schools of Tibetan Buddhism; the notion of lineage; the master-disciple relationship in the tantric tradition. Recommended: ANTH 352, RELIG 202, RELIG 350, or RELIG 354.

RELIG 490 Special Topics (1-5, max. 15) I&S Topics vary with each offering.

RELIG 491 Seminar: Topics and Issues In Judaism (5) I&S *Jaffee* Topics vary. Recommended: RELIG 210; RELIG 400, RELIG 405, RELIG 410.

RELIG 492 Seminar: Topics In Early Christianity (5) I&S *Williams* Topics vary. Recommended: One early Christian history or literature course.

RELIG 497 Field Archaeology (1-10, max. 20) Professionally-guided archaeological fieldwork at a recognized archeological dig in the United States or abroad. Offered: S.

RELIG 498 Honors Thesis (5) I&S Required course for Comparative Religion honors students.

RELIG 499 Undergraduate Research (1-5, max. 15) Primarily for comparative religion majors and majors in the School of International Studies.

* * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA DAVEY, Plaintiff, v. GOVERNOR GARY LOCKE, individually and in his official capacity, et al., Defendants.	No. C00-61R ORDER DENYING MOTION FOR PRELIMINARY INJUNCTION

THIS MATTER comes before the court on a motion by plaintiff Joshua Davey ("Mr. Davey") seeking a preliminary injunction preventing defendants Gary Locke, Marcus Gaspard, Bob Craves, and John Klacik (collectively "the HECB"), from revoking his state scholarship because of his intent to use it to pursue religious instruction.[1] Mr. Davey claims that the HECB's policy intrudes on rights secured by the state and federal constitutions. The court having reviewed the pleadings filed in

[1] Counsel for Mr. Davey is directed to local rule CR 7(c), which clearly sets out the page limits applicable to non-dispositive motions such as this. The fact that Mr. Davey doubled the permissible length on both his opening and reply briefs without leave of the court has not gone unnoticed. Defendants have moved to strike the over length briefs. Although the court will not grant defendants' motion to strike, this is not prejudicial to their position given the court's denial of plaintiff's request for preliminary injunction. Mr. Davey is hereby put on notice that such flagrant disregard of the court's rules at any point in the future will not be tolerated.

support of and in opposition to the motion, along with the remaining record, finds and rules as follows:

I. BACKGROUND

The facts in this matter are essentially undisputed. Governor Gary Locke created the Washington Promise Scholarship (the "Scholarship") to facilitate college attendance by low to middle income students from Washington who ranked among the top 10% of their high school class. The Scholarship's value depends on the level of funding and the number of qualifying applicants. For the 1999-2000 school year, the Scholarship was worth $1,125. Under the terms of the Scholarship, students must enroll in an accredited four-year institution in order to be eligible. The Scholarship funds are sent directly to the qualifying student's school and held in his or her name. The student's institution must certify that the student is enrolled and eligible for aid before any funds may be released. All funds are to be put towards the student's educational expenses.

In 1999, Mr. Davey applied for and was awarded the Scholarship. He received a letter confirming his eligibility from defendant Marcus Gaspard in August of 1999, and an award certificate and congratulatory letter from Governor Locke in October of 1999. None of this correspondence mentioned conditions on the Scholarship related to the student's chosen field of study. Mr. Davey proceeded to enroll in the Northwest College ("Northwest"), a "Christian community of faith and learning" located in Kirkland, Washington, and declared a double major in Pastoral Ministries and Business Management.

Later in October of 1999, Northwest's financial aid director, Lana Walters, received a memorandum from the assistant director of the state's Higher Education Coordinating Board, Mr. John Klacik, informing her that, pursuant to RCW 28B.10.814 and the state constitution, "students who are pursuing degrees in theology are not eligible to receive *any* state-funded student financial aid, including the new Washington Promise Scholarship." Davey Decl., Exh. H (emphasis in original). That memorandum was accompanied by the certification form required from Northwest prior to release of funds to Mr. Davey. That certification itself required Northwest to affirm that "no student [receiving the Scholarship] is pursuing a degree in theology."

Mr. Davey was informed of this policy and that, if he pursued a degree in theology, the Scholarship would not be available to him. He adhered to his decision to pursue his chosen career. As a result, no Scholarship funds have been released to him.

Mr. Davey claims that Washington state's statutory and constitutional prohibitions on the use of state funds for religious instruction violate rights secured by the First and Fourteenth Amendments to the U.S. Constitution, and article 1 §§ 11 and 5 of the state constitution. He seeks a preliminary injunction from this court ordering the HECB to reinstate his Scholarship. He claims he will suffer irreparable injury in that he must work an additional 2.5 hours each week at his after-school job during the 1999-2000 school year in order to make up for the loss of this $1,125 Scholarship.

II. PRELIMINARY INJUNCTION STANDARD

A party seeking preliminary injunction must demonstrate either a substantial likelihood of success on the merits coupled with the threat of irreparable harm, or that serious questions are raised as to the merits and that the balance of hardships tips in favor of the claimant. *Sun Microsystems, Inc. v. Microsoft Corp.*, 188 F.3d 1115, 1119 (9th Cir. 1999); *Roe v. Anderson*, 134 F.3d 1400, 1402 (9th Cir. 1998). Ordinarily, preliminary injunctions are designed to preserve the status quo. *Roe*, 134 F.3d at 1402. A further consideration in cases such as this is whether the moving party has an adequate remedy at law. *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998). If monetary damages or other available legal remedies will cure the moving party's injuries, then preliminary injunction should be denied. *Id.*

III. DISCUSSION

A. The Status Quo

Mr. Davey claims that the status quo will be restored by reinstating his Scholarship. The defendants point out that the status quo in Washington, since 1969, has been that "no aid shall be awarded to any student who is pursuing a degree in theology." RCW 28B.10.814. According to the HECB it is this litigation that challenges the status quo.

The court agrees with defendants. What Mr. Davey is seeking is more correctly characterized as a mandatory injunction from this court ordering the HECB to change a constitutional interpretation in effect for more than three decades.

B. The Threat of Irreparable Harm

Mr. Davey claims that he is irreparably harmed by the denial of his Scholarship. Mr. Davey does not allege that he is unable to attend college, pay tuition, or purchase books or supplies. What he claims is that he must work an additional 80 hours over the school year in order to make up for the Scholarship he had anticipated. Mr. Davey argues that these extra work hours take him away from his studies and other school pursuits. In essence, Mr. Davey claims that "the foregone hours of study and free association are irretrievable and comprise irreparable harm . . . that justifies issuing a preliminary injunction." Plaintiff's Reply in Support of Motion at 2.

The court disagrees. Many students work their way through college each year, and do so while successfully studying and enjoying association with their peers. Moreover, even with the Scholarship, Mr. Davey planned to work approximately 23 hours per week during school. Davey Decl. at 8. It appears that he may have to work an additional 2.5 hours per week, assuming two sixteen week semesters, in order to compensate. This additional burden does not constitute the irreparable harm necessary to justify the issuance of injunctive relief. Nor is the court able to say at this stage of the proceedings that Mr. Davey's likelihood of success on the merits is so great as to warrant injunctive relief absent irreparable injury.

Furthermore, Mr. Davey's true harm is that he has not received $1,125 during the 1999-2000 school year. If Mr. Davey prevails on the merits of him complaint, his injury can be cured by monetary

damages, including interest on the amount he is owed. There being an adequate remedy at law, injunctive relief is unwarranted. *Walters v. Reno*, 145 F.3d 1032, 1048 (9th Cir. 1998).

C. Balance of Hardships Test

An alternate test for assessing whether an injunction is warranted requires the movant to demonstrate that serious questions are raised by the motion, and that the balance of hardships tips in the movant's favor. *Roe v. Anderson*, 134 F.3d 1400, 1402 (9th Cir. 1998).

The court agrees that this case presents important questions involving both the federal and state constitutions that deserve the most thoroughgoing consideration. However, the court finds that the balance of hardships does not tip in favor of Mr. Davey.

As discussed more fully above, the court is hard-pressed to find any significant cognizable hardship imposed by the defendants' denial of Mr. Davey's Scholarship. Mr. Davey does not claim to have been unable to afford any expenses related to his education. Instead, he claims hardship in having to work 2.5 hours per week in addition to the 23 hours he had planned to work before this dispute arose. To reiterate, this hardship is a burden successfully borne by many college students each year.

IV. CONCLUSION

For the above reasons, Mr. Davey has demonstrated neither the requisite threat of irreparable harm, nor that the balance of hardships favors injunctive relief. Mr. Davey's motion for

preliminary injunction [docket 10-1] is, therefore, DENIED.

DATED at Seattle, Washington this 17th day of March, 2000.

//s//
BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF EUGENE WEBB, Ph.D.

[Caption Omitted In Printing]

EUGENE WEBB Declares as follows:

1. I am a Professor of Comparative Religion and Comparative Literature at the University of Washington. I have been at the University of Washington since 1966. I was promoted to Associate professor in 1970 and full Professor in 1975. My home department since 1975 has been the Henry M. Jackson School of International Studies (which in 1975 was named the Institute for Comparative and Foreign Area Studies). I am over the age of eighteen, and am competent to testify to the matters herein.

2. I began teaching religion classes at UW in Autumn 1974 with RELIG 201, our historical survey of western religious traditions, including the religions of ancient Mesopatamia and Egypt, Israel, Persia, Greece, Christianity, Rabbinic Judaism, and Islam. In Spring 1975 I began teaching RELIG 380, our course on theories and methods in the study of religion. In 1980 I added RELIG 301, Religious Thought Since the Middle Ages, and sometime in the later 1980s, RELIG 428, Modern Christian Theology. In 1992 I added RELIG 327, Eastern Christian Traditions (mainly about Eastern Orthodoxy). I was the originator of all of these courses. I continue to teach these courses, and have taught all of them within the last three years.

3. None of our courses are devotional in nature or designed to induce religious faith. The reality is quite the contrary: occasionally, when students raise questions about the truth or ultimate reality of religious ideas, I remind them that our concern in these courses is not with truth but only with the meanings of the ideas—that is, the various ways in which they have been interpreted and reinterpreted over time in the lives of religious communities. Religious ideas are studied in our courses as an aspect of the general intellectual and cultural history of societies and civilizations.

4. I organized the Comparative Religion Program in the academic year 1973-74 as a program in the Institute for Comparative and Foreign Area Studies. Its first courses were offered in 1974-75. We were authorized by the state to grant a BA in Comparative Religion in Spring 1975, and we granted our first BA in June of that year.

5. From the time I organized the Comparative Religion Program at UW it was absolutely clear that the state constitution prohibited any use of state funds, for education or any other activity, that might be designed to induce religious belief in students. The immediate background of the founding of the program was a court case that went to the supreme court of the state of Washington and the [sic] culminated in the judgment that "just as a state university may teach political science but may not advocate a political position, so a state university may teach theology but not advocate a theological position." That judgment cleared up what had previously been a misimpression that we could not teach anything at all about the religions of the

world. We have since taught about religions from a historical and strictly scholarly point of view. Questions of personal faith are the private business of the students and teachers and are not discussed at all in our classes.

I declare the foregoing is true to the best of my knowledge under penalty of perjury under the laws of the State of Washington.

Signed at Seattle, Washington, this 9th day of August, 2000.

//s//
Eugene Webb. Ph.D.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF JOHN KLACIK

[Caption Omitted In Printing]

JOHN KLACIK Declares as follows:

1. I am Associate Director of Education Services for the Washington State Higher Education Coordinating Board ("HECB"). I am over the age of eighteen, have personal knowledge of the matters declared herein, and am competent to testify of these matters.

2. My duties as Associate Director of Education Services include overseeing the HECB implementation of State of Washington financial aid programs, including among other programs the Promise Scholarship. I am familiar with the HEBC [sic] requirements that both public and private institutions of higher education must meet before their enrolled students may receive funding under the Promise Scholarship.

3. I have never asked Lana Walter, or any other financial aid director, to require students to sign a Condition of Award letter as a prerequisite to receiving Promise Scholarship funds. The only signature required by the HECB for Promise Scholarship funding is a certification by the institutions themselves regarding the eligibility of the students seeking funding.

I declare the foregoing is true to the best of my knowledge under penalty of perjury under the laws of the State of Washington.

Signed at Olympia, Washington, this 8th day of August, 2000.

//s//
John Klacik

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF BECKI COLLINS

[Caption Omitted In Printing]

BECKI COLLINS Declares as follows:

1. I am the Director of Education Services for the Washington State Higher Education Coordinating Board ("HECB"). I am over the age of eighteen, have personal knowledge of the matters declared herein, and am competent to testify to these matters.

2. My duties as Director of Education Services include overseeing the operational areas of the HECB. Specifically, this includes overseeing the HECB implementation of State of Washington financial aid programs, including among other programs the Promise Scholarship. I am familiar with the HEBC [sic] requirements that both public and private institutions of higher education must meet before their enrolled students may receive funding under the Promise Scholarship.

3. There are currently 85 institutions set up to receive Promise Scholarship funds, including 42 private or proprietary institutions. Attached hereto is a list of those institutions. The total number of accredited institutions at which a student could receive Promise Scholarship funds is higher than the 85 institutions currently set up, and thus this number could increase in the future.

4. I have reviewed Exhibit 1, pages 17 through 48, and pages 78 through 82 of the deposition transcript of Lana Walter.

5. The HEBC [sic] has never requested institutions of higher education to gather signed "condition of award" letters certifying that the student will not pursue a degree in theology as a condition to disbursement of Promise Scholarship funds. Further, the HECB has not requested or required that institutions gather any other student-signed document as a condition to enrolled students receiving Promise Scholarship funds.

I declare the foregoing is true to the best of my knowledge under penalty of perjury under the laws of the State of Washington.

Signed at Olympia, Washington, this 9th day of August, 2000.

//s//
Becki Collins

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF GARY S. MCCALEB IN SUPPORT OF PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE OPPOSING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Caption Omitted In Printing]

Dated August 16, 2000

* * *

Exhibit B

[NORTHWEST COLLEGE LETTERHEAD]

Financial Aid Services
Fax Cover Sheet

Date: *7/21/00*
Attention: *Gary McCaleb – Staff Counsel*
Business: *American Center For Law and Justice*
Fax Number: *(480) 596-0831*
From: *Brian*
Number of pages including cover sheet: *2*

If all pages are not received, please call the Financial Aid Services Office at (425) 889-5210.

Notes:

Gary, Lana Walter wanted me to fax this Washington Promise Scholarship Conditions of Award. If you have any questions, go ahead and give us a call. Thanks.

Brian

WASHINGTON PROMISE SCHOLARSHIP CONDITIONS OF AWARD

You are being considered for a state of Washington Promise Scholarship. In order to receive this scholarship, if awarded, you must certify that you will comply with the CONDITIONS OF AWARD by signing the statement below.

I, THE UNDERSIGNED, CERTIFY THAT:

1. I am a resident of the state of Washington, in accordance with RCW 26B.15.011-013 [sic];
2. I am registered at this institution as at least a half-time undergraduate student and am making satisfactory progress toward completion of my degree or program objective;
3. I have applied for a federal Pell Grant;
4. I am not pursuing a degree in theology;
5. I do not owe a refund or repayment of a State Need Grant, a Pell Grant, or a Supplemental Education Opportunity Grant, nor am I in default on a loan made, insured, or guaranteed under the Perkins, National Direct, or Federal Family Education Loan programs. In addition, I am not in default on a loan made through a state conditional loan program;
6. I agree to notify the Financial Aid Office immediately of any change in my address or in my financial status;
7. I understand that this scholarship is awarded to assist in meeting educational expenses; and should I withdraw from classes, repayment of all or a part of the scholarship may be required;

8. I understand that when I am able, I can voluntarily make financial contributions to the Higher Education Coordinating Board in recognition of the WASHINGTON PROMISE SCHOLARSHIP and that these gifts will be used to provide financial assistance to other students; and
9. I understand that the offer of a WASHINGTON PROMISE SCHOLARSHIP is subject to and conditioned upon the availability of funds. Further, I agree that the Higher Education Coordinating Board and this institution reserve the right to withdraw, reduce, or modify the scholarship due to funding limitations or due to changes in circumstances which affect my eligibility for the WASHINGTON PROMISE SCHOLARSHIP.

SIGNATURE: _____ DATE: _____

PRINT: _____ ___/___/____

(Last Name) (First Name) (MI) Social Security Number

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DECLARATION OF GARY S. MCCALEB IN SUPPORT OF PLAINTIFF'S MOTION FOR AN INJUNCTION PENDING APPEAL

[Caption Omitted In Printing]

Dated October 25, 2000

* * *

Exhibit A

[Higher Education Coordinating Board Letterhead]

August 18, 2000

JOSHUA DAVEY
10424 E 5TH AVE
SPOKANE WA 99206

Dear Joshua:

Congratulations! On behalf of Governor Gary Locke and the Washington Legislature, I am pleased to inform you that you are eligible to receive the Washington Promise Scholarship.

The value of the award is $1542 for the 2000-2001 academic year. Your scholarship will be disbursed in equal amounts at the beginning of each academic term from fall through spring. You should be prepared to cover all educational costs until the scholarships are disbursed.

To receive the scholarship you must meet the following enrollment requirements:

- Attend an eligible postsecondary institution in Washington State;
- Enroll at least half-time; and
- Not be pursuing a degree in theology.

Eligible institutions include accredited public and private colleges, universities, and career training schools. Please review the enclosed information sheet title "How the Promise Schclarship Will Be Disbursed" for additional information.

If you have questions about the scholarship, disbursements, enrollment requirements, or eligible schools, please contact us toll-free at (888)-535-0747 or by email at wapromise@hecb.wa.gov. Again, congratulations on your scholarship.

Sincerely,

//s//
Marcus S. Gaspard
Executive Director

MG:dl

Exhibit B

[NORTHWEST COLLEGE LETTERHEAD]

October 2, 2000

Joshua Davey
Box 29
[sic]

Dear Joshua:

Greetings from Northwest College and the Financial Aid Services Office. This letter is in regards to the Washington State Promise Scholarship.

You were selected by the State of Washington as a potentially eligible Washington State Promise Scholarship recipient. To complete the eligibility process, the State requires Northwest College to certify that students receiving this award are not majoring in theology. As you may or may not be aware, the Washington State constitution strictly regulates separate [sic] of church and state and, therefore, state funds are not to be issued to students majoring in religious studies.

It is our understanding from the Registrar's Office that you have declared a major in religious studies. Consequently, Northwest College is unable to request funds for the Washington State Promise Scholarship. Our office is very sorry to inform you of this, but the State of Washington has charged us with the responsibility of informing you of this regulation.

If you have any questions regarding this matter, then please give me a call at x4090 or email me at brian.renney@ncag.edu. Thank you.

Sincerely,

//s//
Brian Renney
Financial Aid Counselor

[1]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF JOSHUA DAVEY
Thursday, June 15, 2000

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[10]

* * *

Q [BY MR. SHINN] And how did you come about deciding where you were going to work and how much you were going to work?

A When I arrived on campus to enter the residence halls, I sought out a job on campus for the convenience. And I applied and received the maintenance job.

Q And how many hours a week were you working, about, in the maintenance job?

A I worked approximately 20 hours per week.

Q And was that pretty consistent during the three-month period that you worked there?

A That was fairly consistent, yes.

Q And why did you change jobs looks like during November of 1999?

A Yes, it was during November. The reason I changed is I did not enjoy, particularly, the maintenance job, so I was seeking something that would pay a little more.

Q And at that point, you went to work for the Yarrow Bay Grill?

A Yarrow Bay Grill, yes. Difficult pronunciation.

Q Thank you for the correction. What were you doing there?

[11]

A I worked as a busser.

Q And looks like you earned an hourly wage plus tips?

A That's correct.

Q And how much did you work there?

A On the average, I worked 25 hours per week.

Q So you were working a few hours a week, about five hours a week more than you previously had?

A Yes.

Q And why was that?

A The reason I chose to do that was because of the way the restaurant scheduling is. You don't get certain hours. You just get a time when you arrive at work, go home when people leave the restaurant. And since I wanted to the work a certain number of nights, that resulted in a 25-hour-per-week schedule.

* * *

[27]

* * *

Q Is it fair to say that what you're claiming in this lawsuit is that the Promise Scholarship restriction is adversely affecting your spiritual development?

A Yes, that's fair to say that.

Q And is it also fair to say that your course of study is designed to prepare you for a career in which you'll be promoting Christianity?

A Yes, that is fair to say.

Q Well, let me introduce another term, and I appreciate your bearing with me in helping me to define these terms.

Is "clergy," is that a term that's applicable to those who are pastors or ministers? Are they members of the clergy?

A Yes, that would be applicable.

[28]

Q So your education, then, would be preparing you for the clergy; is that right?

A Preparing me to be a member of the clergy, yes.

Q How did you declare your major?

A Upon registration for classes at Northwest College, students are offered the opportunity to declare a major at that point. When I registered for fall 1999 semester, I declared my major.

Q And did you do that by checking a box on a form? What was the actual conduct?

A There was a line on the registration form labeled "major," and students wrote in their choice.

Q And what did you write in on that form?

A I wrote on that form, pastoral ministry and business management and administration.

Q And in doing that, where did that form go when you were finished filling it out? Who did you give it to? I can't expect you to know where it went after that, but what did you do with the form when you were done with it?

A When I was finished with the form, I gave it to a faculty advisor who was there to help students register for classes.

Q Do you know where it went after that?

A I am not really sure. Probably the registrar's office.

[29]

Q Did you tell anybody what major you had filled in on that form?

A I don't remember telling anyone specifically.

Q Do you recall generally?

A I probably told quite a few people. It was just a common conversation topic.

Q From your general recall, is it fair to say that that would have been a subject that came up in social conversations?

A Yes.

Q And you don't recall it coming up in any other kind of situation?

A What type of situation do you mean?

Q Aside from these general conversations or these social situations that you generally recall.

A No, I don't recall any other specific instances.

Q Why did you declare that major? Is it two majors? Is that how --

A Yes, it is two majors.

Q Why did you declare those majors?

A The reason I declared those majors was that I knew what I wanted to study, and I believed those would best equip me to be a member of the clergy.

* * *

[33]

Q So to the best of your recollection, you never saw a form from Lana Walter; she was just talking about it?

A As I can recall, that's correct.

Q Okay. But she did indicate that she had a form for you to sign?

A She indicated that she had the form if I chose to sign it.

Q And I think we can take it that you did not choose to sign the form?

A That is correct.

Q So was it your understanding from your conversation with Lana Walter that Northwest College considered your pastoral studies major to

be pursuing a degree in theology, as that applies to the Promise Scholarship?

A My understanding from my conversation with Ms. Walter was that the State considered Northwest's pastoral ministries degree to be pursuing a degree in theology. I did not understand exactly how that decision was made, whether it was made by the State or by Northwest College.

Q At that time, did you dispute whether the pastoral studies major was pursuing a degree in theology, as that applies to the Promise Scholarship?

A No, I did not dispute that.

Q Do you dispute that at this time?

[34]

A No, I don't.

Q When you had the conversation with Ms. Walter, did you ask her what majors were considered to be pursuing a degree in theology?

A I did not ask her what majors specifically would be considered to be pursuing a degree in theology. I relied upon a more generalized understanding.

Q Did you have any difficulty coming to that general understanding of what pursuing a degree in theology meant to you?

A No. From my understanding of what the State would consider to be church related or theology related and looking at what Northwest's program entailed, I felt that I understood what the State was getting at by saying that program wouldn't be covered by the scholarship.

Q Tell me what else you recall of that conversation with Ms. Walter.

A I recall her saying that there were three other Northwest College students put in my same position. Having to choose, I mean.

Q And did she tell you who those three students were?

A No. She didn't give me any names.

* * *

[36]

* * *

A I believe I know one name.

Q Which student is that?

A I believe his name -- I know his name is Luke Glidden. That's G-l-i-d-d-e-n. And I believe him to be one of the other students.

Q Tell me why you think that.

A After the news of a lawsuit reached the papers and the school, he approached me on campus and told me that the same thing had happened to him.

Q What do you recall of that conversation?

A He told me that he wanted to join with me in my efforts to recover the funds and have the law changed.

Q Do you recall anything else? How did you respond?

A I told him that that would probably be a good thing, and I gave him Mr. McCaleb's phone

number and told him that if he was seriously interested, he should give him a call.

Q And how did Mr. Glidden reply, if he did?

A He said thank you, and I believe he did contact my attorney.

* * *

[38]

* * *

Q And aside from Ms. Walter, am I correct in understanding you haven't had any conversations or any communications with any other Northwest College officials regarding your eligibility for the Promise Scholarship?

A No, I haven't talked to anyone else.

* * *

[41]

* * *

Q So would I be right in understanding that the courses are taught to you with the message being that the Bible provides the blueprint, if you will, or guidance for how a subject should be understood?

A Yes, I believe that's a fair statement.

Q Is it a part of the instruction that you've been in at Northwest College that instructors will indicate that a particular religious approach to an issue is the correct approach?

A I am not sure I really follow you.

Q In your courses, have your instructors indicated in their teaching to you that the Bible provides a particular answer to a given particular question?

A To some given questions, it's very clear and does provide a very specific answer. Others, other questions a person must take into account their understanding of the overall message of the Bible and the principles therein and apply those and come to a conclusion.

* * *

[44]

Q In your courses, is it the norm for other points of view to be expressed, opposing points of view, to how the Bible would have you act?

A I believe the professors in general make it a point to express opposing points of view to deal with those questions that, well, that others hold different views on. It only makes intellectual sense, I guess.

Q Can you describe for me, please, the difference, as you see it, between Northwest College and other nonreligiously affiliated colleges.

A I see many differences. I don't know exactly what you mean.

Q Do you see a fundamental difference between Northwest College and, say, a public university?

MR. MCCALEB: Objection. Vague.

Q It is vague, but go ahead and answer if you understand my question. And then maybe we can figure out a more specific question.

A I do see a fundamental difference.

Q And what fundamental difference do you see, and how would you describe that to me?

A I believe the fundamental difference would exist in the school's view of the Bible, their aims in instructing from it or instructing in any religious classes, and their goals as an institution for their students.

[45]

Q How would you characterize your perception of the different views of the Bible between Northwest College and a public institution?

A Whereas Northwest College used the Bible to be the ultimate source of truth and authority for any matter that it directly expresses, and the foundation for which to understand other questions of learning – we kind of discussed that idea -- that's Northwest's view of it. Whereas any given public institution, as a generalization, wouldn't view the Bible necessarily to be ultimate truth, but one of many writings or books that some have claimed to be ultimate truth.

Q And how would you characterize your understanding of the differing aims in instructing from the Bible between Northwest College and the public institution?

A I believe the aim of Northwest College in instructing from the Bible is to help its students grow in their understanding of the Bible, become more mature Christians, to become more -- well, to become better educated individuals in all matters, and to prepare their students to live

lives in service to God and others that make a serious difference in the world.

Q And that's the Northwest approach. How do you perceive the difference between that and the public institution's approach?

[46]

A In general, I believe a public institution's goal in teaching from the Bible would be to present the viewpoints of some in an intellectual fashion, not necessarily as truth or as something that should impact a person's life; but, instead, as a belief and system of worship of a significant number of people.

Q And when you were describing the Northwest College aim in instructing from the Bible as you understand it, you said part of your answer was that it would allow students to live their lives in service to God.

Is that an accurate restatement of part of the instructional purpose?

A I think a more accurate would be to better facilitate them to live their lives in service to God.

Q And that would be in service to God as instructed in the Bible; is that right?

A Yes, that's correct.

Q And, finally, how do you see the difference in the goals of the institutions between Northwest College on one hand, and public institutions on the other hand?

A I see the goal, what I believe would be the goal of Northwest College would be to produce students

who are not only academically -- well, not only well educated, but also well equipped to serve God with their lives, better facilitated through their education to serve

[55]

* * *

Q Would you please, Mr. Davey, take a moment to read the description of Exploring the Bible.

Have you had an opportunity to do that?

A I have.

Q Does that description describe the course as it existed when you took the course last fall?

A I believe that's a fair description of the course that I took.

Q And is it fair to say that the course's intent of helping the student understand the plan of redemption evident in both Testaments is different than a purely academic consideration of the Bible?

A I believe that is somewhat different, yes.

Q And can you tell me, can you articulate that difference for me.

A I believe that understanding the plan of redemption evident in both Testaments of the Bible as is intended by Northwest College requires taking the Bible as truth, as foundational. Whereas a purely academic understanding would not necessarily subscribe to the Bible as ultimate truth.

* * *

[58]

Are those courses that you'll be taking as part of your major course of study?

A Most of those are, yes.

Q Can you tell me which ones of those you expect to take.

MR. MCCALEB: Objection, based on continuing objection I have in that this is a prior catalog from '98-99 and they may not be accurate descriptions. But go ahead and answer.

A I have already taken the first one on that list, Christian Doctrine. I anticipate taking Pentecostal Doctrines, Systematic Theology I and II.

Q Can you briefly describe for me what the Pentecostal doctrines are. Maybe it's not fair because you haven't had the class yet, and you can amend it later after you have taken the class. But can you currently describe what those doctrines are? And, again, just briefly, if you would.

A I'm not sure as to what exactly the subject matter of that class or those doctrines are.

Q Okay. Is chapel attendance, is that a part of the expectation of the students at Northwest College?

A Chapel attendance is required for Northwest College students.

Q How often do you attend chapel?

A Students are --

[59]

Q Let me rephrase the question, maybe make it a little more specific. How often are you required to attend chapel?

A There are a given number of chapel days each semester. Currently, students are allowed six misses.

Q Is that changing at some time? It sounds like maybe there's a change in program.

A I don't know of any change in the works. That is a change from the practices that were in place in this catalog.

Q And during the time that you've been a student at Northwest College, has the allowance of missing chapel six times per semester been in place?

A Yes, that's been the policy.

Q So it changed before you started attending?

A Yes, that's correct.

Q About how often per semester is chapel required? Or can you describe to me maybe how often are the chapel days that you talked about.

A Chapel is generally held three times a week: Monday, Wednesday, and Friday. Occasionally, additional chapel days are added on a Tuesday or Thursday for special events.

Q And can you briefly describe to me what the chapel entails.

[61]

* * *

Q Okay. So it should read:

> "When students apply for admission, they must indicate that they have made a personal commitment to Jesus Christ as Lord and Savior and that they are willing to live by the community rules adopted by the College."

Does that still describe, as you understand it, an expectation of students at Northwest College?

A As I understand it, that is still an expectation.

Q Based on the grades that you got during the first year at Northwest College, are you receiving or eligible for any additional scholarships?

MR. MCCALEB: Objection to the extent it calls for speculation. Go ahead and answer.

A Eligible for, possibly. Receiving, no.

Q Are there any scholarships that you're aware of that you might, for a straight A grade point average, make you eligible for?

A I'm not aware of any scholarships specifically.

* * *

[62]

Q I'm going to ask you a couple more questions about what we defined earlier as the Promise Scholarship restriction. That was referring to the restriction on those students who are pursuing a degree in theology.

Do you believe that the Promise Scholarship restriction is addressed to your religious beliefs?

A Yes, I do.

Q Can you explain that to me, please.

A I believe that the Promise Scholarship restriction singles me out from other students like myself in terms of educational qualifications, and forces me to either choose to deny what I hold as sincere religious beliefs to pursue a degree in theology, or -- either deny those beliefs at the expense of funding for which I would otherwise be eligible.

Q And in saying that it singles you out from other students like yourself, can you explain who you are singled out from among.

A I believe I'm singled out from all other Washington Promise Scholarship recipients who had similar GPAs, similar test scores, and similar income levels.

Q And do you believe that that is because of your religious beliefs?

A Yes.

Q And how is that tied to your religious beliefs?

[63]

A My religious beliefs -- I think we talked about this at the beginning of the deposition, too -- require me to commit myself fully to what I believe is God's intention and desire for my life, which requires me to pursue a degree in pastoral ministries and continue on to a career as a pastor.

Q I am going to ask you a question that Mr. McCaleb will likely object to, but answer it anyway if you can.

Do you believe your rights would be violated if your religious beliefs required you to attend a nonaccredited institution of higher education?

MR. MCCALEB: Objection. Calls for a legal conclusion. And, yes, go ahead and answer.

A Can you state that one more time.

Q Let me set up a little bit of foundation for you here.

The Promise Scholarship has several requirements. One of those requirements is that you be attending an accredited institution of higher education.

My question is, would you believe that your rights were violated if your religious beliefs required you to attend a nonaccredited institution of higher education?

MR. MCCALEB: Same objection.

A Do you mean would my rights be violated in the sense that I would not receive the Promise Scholarship, but this time for a different reason?

[64]

Q Yes, that's exactly what I'm kind of getting at. If the reason was that, rather than the fact that you are pursuing a degree in theology, but that your religious beliefs required to you attend a college that was not accredited, would that similarly violate your rights, do you believe?

MR. MCCALEB: Same objection, as well as ambiguous, vague, and calls for speculation. But go ahead and answer.

A If my religious beliefs required me to attend a nonaccredited institution and because of that I became ineligible for the Washington Promise Scholarship, I believe that my rights would be violated.

Q The lack of the Promise Scholarship funds that you experienced hasn't prevented you from pursuing your chosen major of pastoral ministries, has it?

A No, it has not prevented me from pursuing that major.

Q And is it consistent with your understanding that if your major was something other -- if your major was only business administration, is it consistent with your understanding that you would be eligible for the Promise Scholarship regardless of your religious beliefs or lack thereof?

A It is my understanding that if I was only a business major, I would be eligible to receive the Washington

[65]

Promise Scholarship.

Q And that's true without respect to whether you identify yourself as a Christian?

A Yes.

Q Has anyone at any time indicated to you that the Promise Scholarship would require you to refrain from discussing your religious beliefs?

A No, no one has indicated that to me.

Q And has anyone at any time ever indicated to you that the Promise Scholarship would require you to refrain from associating with any particular individuals?

A No one has overtly expressed that to me.

Q Has somebody covertly expressed that to you?

A I believe that is implied through the nature of the scholarship restriction; that in denying students the funds to pursue their chosen degree in theology, a restriction was placed on them in terms of who they can associate with because of the practical reality that for some students, lack of those funds may prevent them from attending the institution they would have otherwise chosen.

Q Does that restriction apply to you?

A I'm not sure I understand.

Q My understanding of that, of what your answer is, was that it could restrict you from associating with

[66]

persons because it could restrict you from attending your chosen institution. Is that accurate?

A I believe that is accurate. And, in addition, it could require some students to, even if they were able to attend their chosen institution, for want of funds they may have to spend more time working, which would cut into their time and ability to associate with others who they might have otherwise chosen to associate with.

Q So you have articulated two separate restrictions; the first being that you may not be able to attend the institution of your choice. That doesn't apply to you personally, does it?

A That restriction does not apply to me personally.

Q But it is your contention that the second restriction you've articulated, that you're not free to spend as much time associating with those you would choose to associate with, is a result of the Promise Scholarship restriction, right?

A Yes, that is correct.

Q And you were already planning on working to some extent, regardless of receiving or not receiving the Promise Scholarship, right?

A To some extent, yes.

Q Has anybody ever told you that the Promise Scholarship restriction is designed to prevent you from spending as

[67]

much time as you'd like to associating with those who you choose to associate with?

A No one has ever explicitly stated that to me.

Q Do you have any reason to believe that that is the intent of the Promise Scholarship restriction?

MR. MCCALEB: Objection to the extent it calls for speculation.

Q And what I'm interested in is if you have reason to believe that.

A Do I believe that the Promise Scholarship restriction is intended to prevent students from

associating with certain people when they might otherwise?

Q Right.

A I don't believe that is the intent of the restriction.

Q What would you believe the intent of the restriction to be?

MR. MCCALEB: Objection to the extent it calls for a legal conclusion, speculation, and lack of foundation. Go ahead and answer.

A I'm not entirely sure what the restriction intent is. But I believe it has something to do with preventing State money or government money from being given to students who are interested in pursuing theological or religious degrees.

* * *

[70]

* * *

Q And you don't know the names of those two students, right?

A I do not.

Q And do you know of any other students attending other institutions who have chosen not to pursue a particular major so that they will be eligible for Promise Scholarship funding?

A I don't know of any other such individuals.

Q Do you know of any other individuals who have attended other institutions besides Northwest College who did not receive Promise Scholarship funding because they were pursuing degrees in theology?

A I don't know of any other students personally in that situation.

Q I'd like you to explain to me the damages that you are claiming in your lawsuit. How do you claim that you were damaged by not receiving the Promise Scholarship funds?

A A more thorough articulation of those damages is in this document, which is -- I forget what it's called -- the declaration. Of course, I agree with everything that I said previously.

[71]

The damages have been financial, in that I have been unable to pursue some of the things I would have liked to pursue at college as part of the college experience because of the need to work a little more for lack of funds.

They have been against what I -- what I feel are my rights guaranteed by the Constitution of free speech and association, in that they have limited what I see as an expression of my speech in choosing my major and forced me to choose between expressing myself in that way or giving up that right.

I guess the freedom of assembly or association because of time spent -- unable to spend with other students, professors who would enhance my college experience.

And in every other way articulated in the declaration.

MR. MCCALEB: I have to enter an ex post facto objection there that when you said damages, I was thinking in terms of the legal

term of art, "money," not realizing we would step into some areas that I think would bar a legal conclusion. So I would object on the basis of a legal conclusion to the prior answer.

* * *

[73]

aside from those that I've stated in declaration and to you now, I know of no other ways in which I've been damaged.

Q Do you contend that the Promise Scholarship restriction coerced you into acting in ways that are contrary to your religious beliefs?

A No, I don't believe that the restriction coerced me. It did require me to choose between my religious beliefs and the scholarship money.

Q But it's accurate to say that the restriction did not coerce you to act contrary to your beliefs; you didn't have to, as an end, act contrary to your beliefs?

MR. MCCALEB: I object on the basis it does call for a legal conclusion.

A I would say it's an attempted coercion, but not one that I chose to give in to.

Q So you were not coerced into acting contrary to your religious beliefs; is that right?

MR. MCCALEB: Same objection.

A No, I was not.

Q Is it contrary to your religious beliefs to work during the time that you're in school?

A No, I don't think so.

Q You're getting married shortly. Have you incurred expenses that are related to the wedding?

[74]

MR. MCCALEB: Objection. Relevance. Go ahead and answer.

A I have, yes.

Q And what are those, briefly, if you will?

A Those expenses would be for some portions of the wedding, honeymoon, moving, buying items for the house, dishes and that kind of thing. And those kinds of expenses that one would normally encounter when getting married.

Q Have you personally ever attended any other any religion classes at any other institutions of higher education?

A I have not.

* * *

Q Can you explain to me a little bit more how you believe your rights to freedom of speech have been affected.

MR. MCCALEB: Objection to the extent it calls for a legal conclusion.

A Again, I refer to the declaration. And I believe that my action to choose my major as pastoral ministries over receiving the Washington Promise Scholarship is an overt expression of speech that I am making this choice, and I don't feel I should have to hide it in

[75]

any way. And that through asking me to make that choice at the expense of the scholarship money, or to choose the scholarship money at the expense of what I really wanted to pursue in college, is a violation of my right to free speech.

Q Any other ways that are not addressed in your declaration or that you haven't told me about today?

MR. MCCALEB: Same objection.

A Again, I would just refer to the declaration. And at this time, I cannot think of any other ways.

MR. SHINN: I don't have any further questions.

(Deposition concluded.)

(Signature reserved.)

[2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF MARCUS GASPARD
Monday, May 1, 2000

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[21]

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Q. [BY MR. MCCALEB] Do you want me to rephrase the question? I was only using the document to bring out the criterion within the Washington Promise Scholarship that there is a restriction: You do not receive the scholarship if you are pursuing a degree in theology. So in that context of a restriction on the ability to receive scholarship funds, what does it mean to be pursuing a degree in theology?

A. We were -- this refers to the law as we understand it with regarding financial aid eligibility for citizens of this state, and there is a restriction for those who would pursue a degree in theology. And we were applying that same standard of eligibility to the Promise Scholarship. In other words, obeying the law as we understood it.

Q. Are there any other programs administered by the HEC Board that prohibit receipt of funds based upon a subject matter that is either studied or not studied?

A. That would apply to financial aid programs from the state that we are responsible for administering. The State Need Grant would be the

[31]

A. Yes, at least I was on one occasion that I could recall, again, somebody of those three individuals that I mentioned had said there had been a conversation with the aid administrator.

Q. And what is the gist of the conversation that you recall?

A. As I recall there was a discussion about Mr. Davey's major, and if he were to major in theology that he would not be eligible, that he does not have to declare his major at this point.

Q. What effort was made to advise Mr. Davey that he did not have to declare a major?

MR. SHINN: Objection, calls for speculation.

You can go ahead and answer.

A. I couldn't answer that question because I wouldn't know.

* * *

[2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF JOHN KLACIK
Monday, May 1, 2000

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* * *

[10]

* * *

Q. [BY MR. MCCALEB] Are there any other criteria bearing upon a person's eligibility to receive funds under the scholarship?

A. Well, to be a recipient -- to be a recipient, the student must also attend an eligible institution, must enroll for at least six hours or more and cannot pursue a degree in theology.

Q. And could you define "pursue" in that context?

A. It's the institution's decision as to whether or not a student is pursuing a degree in theology, so the institution's examination of the student's record, enrollment.

Q. And could you define a degree in theology in this context?

A. In this context it's, again, the institution's decision to take a look at that law 20 and determine how it applies at their institution.

Q. When a scholarship recipient is awarded this scholarship, does a scholarship affect other financial aid that person might have such as need-based aid?

A. It may.

[12]

Q. Are you aware of any public recognition events?

A. Yes.

Q. And what would those be?

A. The Governor held five recognition events across the state.

Q. Were those regional events or how were they organized?

A. I don't know.

Q. What is the nature of the event?

A. It was a ceremony to present -- just to recognize the scholars at five schools at which he appeared. And I believe that he also handed them a certificate at that point.

Q. Okay. In your answer to us you responded to the Complaint. I have copies here to refer to if you wish. There are a couple of statements that I would like to ask you about.

I specifically direct your attention to Page 10 of the defendant's answer to us. And in Paragraph 7, Page 10 of the answer, you allege: That in declaring a major in theology, the plaintiff, Mr. Davey's, sole purpose was to create a case or controversy for purposes of litigation only.

My question is what facts or

[13]

information do you base that allegation on?

MR. SHINN: I'm going to object to the question as far as calling for a legal conclusion regarding the answer the defendants filed regarding, I guess, clarifying whether this was an answer filed and signed off on by the defendant's attorney or the defendants regarding Mr. Klacik's knowledge.

Please go ahead and answer the question.

A. My understanding is that students in the first and second year of a four-year degree program are not required to have named a major in any way. That one is not normally required until they have completed the general education requirement and move on, essentially move on into their junior year of college.

Q. Is a student generally prohibited from declaring a major enrolling in the first two years?

A. I don't know.

* * *

[30]

* * *

Q. In Paragraph C what does "educational program" mean? Can you define it?

A. I would have to defer to the institution.

Q. What does religious worship mean?

A. Again, I'd have to defer to the institution.

Q. Religious exercise?

A. Once again, I'd have to defer to the institution.

Q. And religious instruction?

A. It would be to the intuition that I would look to.

Q. Assuming the state's interest is driven by the division of church and state, and based upon your deference to the institution, how does the Board verify that a student isn't pursuing a degree in theology if the institution is doing all the decision making?

* * *

MR. SHINN: I'm going to object to the question to the form as confusing. But if you

[31]

understand, please go ahead and answer.

Q. Would you like me to break that down into parts?

A. If you wish.

Q. Does the Board train any institutional personnel on how to determine that a person is pursuing a degree in theology?

A. No, it does not.

Q. Do you do any kind of site checks or verification to ensure that the institution is following your criteria?

A. In the Promise Scholarship that's not happened.

Q. Do you review the institution's process for making the determination?

A. Not -- no.

Q. Do you have plans to initiate a review of institutional determinations?

A. I have no plans.

Q. Referring back to the document again, who completes and signs off on this document?

A. This is a document which the financial aid administrator signs off on at the time that they are submitting their request for warrants or for money.

Q. The educational institution?

[54]

Q. As far as the institution goes, what are the criteria for being an eligible institution?

A. Must be offering their education within the State of Washington, and must be accredited -- must be accredited by an accrediting agency that's recognized by the Board.

Q. Those are national?

A. Yes.

Q. And was Northwestern qualified under those criteria?

A. Northwest College?

Q. Northwest College, excuse me.

A. Yes.

Q. And is it currently eligible?

A. Yes.

Q. I'm bouncing around. So no student is pursuing a degree in theology is a requirement that you send to the school, correct?

A. Yes, the certification statement.

Q. And the school makes the decision as to whether a person is pursuing a degree in theology?

A. Yes.

* * *

[61]

* * *

A. They could do that.

Q. Or software related to the course?

A. Um-hmm.

Q. That's a yes?

A. Yes.

* * *

Q. Did you receive a budget from Northwest College specifying these categories for 1999?

A. I'm sure we did.

MR. MCCALEB: Mike, I'll probably send a supplemental request and get that from you guys.

Q. So you've delegated the responsibility for determining what an educational expense is to the institutions?

A. Yes.

Q. Have you ever had a case where a budget has come back to you from an institution with a category or an item defined within the educational expenses that you said: No, this isn't legitimate, and rejected the budget?

A. Yes.

[66]

* * *

Q. When are you going to get the finished official hard copy prints out?

A. Oh, they are being sent out right now.

Q. On the first page, this is a four-page document, and it is not Bates numbered. The first page there is a sentence that says, "Who is eligible?"

Statement No. 4 says, "Not pursue a degree in theology," and there is a reference there. What's that reference?

A. The reference is to RCW 28B.10.814.

Q. And that's a Washington statute, correct?

A. Yes.

Q. What's that statute say?

A. I don't have it in front of me but it concerns theology. It's the theology statement.

Q. It's a theology statement that pertains to not pursuing a degree in theology?

A. Right.

Q. There is another Washington statute that's closely allied to that which is Section 28B.10.812,

also pertains to matters of religion. Are you familiar with Section 812?

A. Not off the top of my head, no.

[67]

Q. It reads: All student financial aid shall be granted by the commission without regard to the applicant's race, creed, color, religion, sex or ancestry. Are you familiar with that now that I have read it?

A. Yes.

Q. Why is there no reference to that in this application?

MR. SHINN: Objection. It calls for a legal conclusion.

Go ahead and answer if you know.

A. I think that what we have addressed here are the points that we have understood to be the most important and germane for the student and the families to understand as they apply for the scholarship.

Q. The general nondiscrimination statement is not important?

MR. SHINN: Well, I'll object. It misstates testimony.

But go ahead and answer.

A. Again, I think this is addressing the most important issues that we felt that students and the families wanted to know about and needed to know about.

[74]

* * *

My question is what nonstate resources are contemplated in that paragraph?

A. I don't know of any.

Q. Do you ever receive any contributions from private sources for your program?

A. There is the American Indian Endowment Scholarship Program, we receive contributions for that.

Q. What's the source of funds for paying the Promise Scholarship grants?

A. It is the State General Fund.

Q. Is there any federal funding involved?

A. No, there is no federal monies.

Q. Do you receive federal money for Board administrative purposes?

A. For?

Q. Just for operating the Board.

A. None that I know of.

Q. These became effective I believe on October 4, if I read that date stamp correctly. It's poor on my copy. Are these currently in effect?

A. The Board has adopted permanent rules now.

Exhibit 6

TO: Financial Aid Administrators

FROM: John Klacik

SUBJECT: WASHINGTON PROMISE SCHOLARSHIP: DEGREES IN THEOLOGY

Over the past few days, you have received differing messages from me regarding institutional certification of student eligibility for the Washington Promise Scholarship. The first certification included a statement, borrowed from the Educational Opportunity Grant program statute, that Washington Promise Scholarships recipients would not be engaged in various aspects of religious instruction. On Friday, based on staff review of the legislation establishing the Promise Scholarship program and on feedback from some institutions that time did not allow for such a comprehensive certification, we modified the statement, removing that reference.

Based on further review and consultation with the Attorney General's Office, however, I am writing to clarify that students who are pursuing a degree in theology are not eligible to receive *any* state-funded student financial aid, including the new Washington Promise Scholarship. Although the Appropriations Bill creating this program is silent on this issue, the State Constitution is clear regarding the separation of church and state. We have consistently interpreted this constitutional provision as

prohibiting state financial aid funds for students who are pursuing a degree in theology. That prohibition must also be applied to this new program.

A statement certifying that Washington Promise Scholarship recipients are not pursuing a degree in theology will be added to the Payment Request Form.

We apologize for the confusion, and hope that this clarification will be helpful. Please contact me if you have any questions. I can be reached by telephone at [redacted], or by email at [redacted].

Thank you.

[2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF REBECCA COLLINS
Monday, May 1, 2000

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[16]

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Q. [BY MR. MCCALEB] Okay. Were you aware of the criterion that in addition to the financial, organizational and academic criteria we have already discussed there is a criterion saying before you get the money you can not be pursuing a degree in theology?

A. Yes, I was aware of that.

* * *

Q. What does pursuing a degree in theology mean to you?

A. Well, I don't – I'm not certain.

Q. Who would be certain?

A. The individual institutions determine – each one determines what they determine to be a degree in theology.

Q. So the decision as to who is or is not pursuing a degree in theology rests with the institution?

A. Yes.

* * *

[2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF LINDA SCHACTLER
Monday, May 1, 2000

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[16]

* * *

Q. [BY MR. MCCALEB] What does pursuing a degree in theology mean?

A. I don't know.

Q. Who does know?

A. That is a determination that is made on college campuses.

Q. By whom?

A. I don't know.

Q. By the institution, though, rather than a government official?

A. I wouldn't want to guess about exactly who makes that decision. I know that that's not a decision that the HEC Board makes.

* * *

[2]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

[Caption Omitted In Printing]

EXCERPTS OF DEPOSITION OF LANA J. WALTER
Friday, June 16, 2000

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[10]

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Q. Were there any criteria attached to the type of school?

MR. SHINN: I'm going to object; vague as to the time frame. Go ahead and answer.

MR. McCALEB: I think the time frame is the spring of 1999, as I understand it, when you first learned of the program.

THE WITNESS: Yes.

MR. McCALEB: And the question before you now is whether there is any organizational criteria. You said attending, I believe, a four-year institution?

A. Actually, I don't know if it was a four-year institution or a school, a college, in the State of Washington. It was my understanding this college or institution had to have certain accreditation standards. And I don't actually know if two-year schools are eligible for the Promise Scholarship.

Q. Since that time when you first heard of this program, have those criteria changed?

A. Since I first learned of the criteria for the Promise Scholarship, I learned in October of 1999 that

[11]

students majoring in Theology were not eligible for the Promise Scholarship.

Q. And how did you learn that?

A. Through a letter from John Klacik.

Q. What did Mr. Klacik say in that letter?

A. He said that students majoring in Theology were not eligible to receive the Promise Scholarship.

Q. Did he state any authority for that restriction?

A. In the letter he states -- I don't know exactly what he uses to say that students are not eligible, if he quotes a rule, the WAC, Washington --

Q. Administrative Code?

A. Correct. If he states that or not.

Q. Did you have any other communication from Mr. Klacik besides the letter you reference regarding these change criteria?

A. Phone call.

Q. When was that?

A. The day would probably be one or two days after the 12th of October, when I received the letter. I did call John Klacik.

Q. And what did Mr. Klacik say to you?

A. We discussed the letter. And I asked John Klacik why this new criteria had been put in place. And I explained to him the difficulty I was in with four

[12]

of my students.

Q. Who were those students?

A. Joshua Davey; Luke Glidden, G-L-I-D-D-E-N; and there are two others, and I don't remember their names.

Q. Male, female?

A. Two females.

Q. Do you remember first names, last names of either of them?

A. One, the last name was Hamer, H-A-M-E-R. And the other one was Robinson. I just remembered it.

Q. What was the nature of the trouble regarding these four students?

A. The students had been informed by the State through a letter from Governor Locke that they were recipients of the Promise Scholarship. I believe the letter they received was in September. The students were under the impression that they were receiving the scholarship. And it was left to the college, meaning to inform the students that they were not eligible for the scholarship due to the nature of their major.

Q. How did that obligation come to rest on your shoulders to inform them they were no longer eligible?

A. As the Director of Financial aid, it would fall upon my shoulders.

Q. But this was a State requirement, that people

[13]

pursuing a Theology degree were not allowed to have the scholarship after the State requirement went into effect?

A. Correct.

Q. What benefits were attached to receiving the Promise Scholarship?

A. The Promise Scholarship could be applied for any educational expenses the student had at a college.

Q. So there's a monetary disbursement, an award of money?

A. Correct.

Q. Is it generally considered an honor to receive a scholarship?

A. Yes.

Q. Would there be any distinction between scholarships received strictly on the basis of economic need and one that has academic criteria, in terms of one having more of a sense of honor?

A. Yes.

Q. What would that distinction be?

A. A scholarship received for academic ability or talent is perceived more prestigious than a scholarship received based upon need.

Q. Who would be perceiving that as prestigious, employers, other schools?

A. The family, the student, grandma, grandpa, other

[14]

students, faculty, future employers, current employers.

Q. Did Northwest College extend any particular recognition to those people who received or were eligible for the Washington Promise Scholarship?

A. No.

Q. Are you aware of any other organization that gave formal recognition to Washington Promise Scholarship recipients?

A. No.

Q. You said that the Governor had sent out a letter, and we have previously entered into evidence a letter from the Governor, and a certificate.

Are you aware of anything the State did besides those two items to recognize Promise Scholarship recipients?

MR. SHINN: I'm going to object as to the characterization of the evidence and whether this witness is aware of what that evidence is or not.

MR. McCALEB: I'll rephrase.

You mentioned earlier that the students that have come to you, the four students that received the letter from the State that had indicated they were eligible for the Washington Promise Scholarship, are you aware of any other materials, correspondence, or attention that any of those four students received from the State?

[15]

A. No.

Q. Did you or Northwest College issue any news releases?

A. No.

Q. Was receiving the Washington Promise Scholarship itself considered an honor?

MR. SHINN: Objection, calls for speculation; vague. Go ahead and answer.

A. Yes.

MR. McCALEB: It's a little unnerving to have people do that, object when you're about to speak. Get used to it. That's really one of the most painful things about depositions, I think.

Q. How many Northwest College students were determined to be eligible to receive the Promise Scholarship in the 1999-2000 academic year?

A. I have the information in this folder. But I could guess.

Q. If you want to refer to notes, that's fine.

A. Okay. I have the list. Fifteen.

Q. And these were persons who were eligible or persons who actually received the Promise Scholarship?

A. Students who received it.

* * *

[23]

Northwest College or their Promise Scholarship application. We printed that list; we had a list of students who had indicated Northwest College. And we checked that list to see if the students were enrolled at our school.

Q. You mentioned you got the information that the student intended to attend Northwest College from their scholarship application. Did you actually receive copies of that application?

A. No.

Q. How did you have access to that?

A. The applications went from the student to the State. The State selected the qualified students, prepared a master list that colleges could access from a website.

Q. So when you made that reference, you were really talking about the website?

A. Correct.

Q. Understanding that you've corrected the chronological flow of this, I'm going to follow this sequentially just so I don't mess myself up.

The fourth bulleted point is: "College eliminates students that major in Religious Studies."

What does it mean to eliminate a student that

[24]

majors in Religious Studies?

A. At Northwest College, our Department of Religious Studies, the students in that department are majoring in Theology. With the

list of qualified students, we determined which students on the list were majoring in our Religious Studies, and did not award them -- did not request a warrant from the State.

Q. You mention a Religious Studies Department. Is that an organizational division of your college?

A. Yes, it is.

Q. What other departments -- assuming these would be academic departments, what other departments are at Northwestern?

A. In addition to the Religious Studies, we have a Department of Education, Department of Nursing, a Department of Arts and Sciences.

Q. So is it accurate to say in the context of this bulleted statement that Religious Studies means any person who declared a major that was offered through the Religious Studies Department? I'm not sure I got the name of the department right.

A. It's the Department -- I have to think for a moment; we've just changed it. In 1999-2000 it was the Department of Religious and Ministerial Studies.

[26]

* * *

Q. Is Religion and Philosophy a single major, or is that two different majors?

A. One major.

Q. Would a person who is majoring in Religious Studies at Northwest College obtain a degree in Theology upon graduation?

A. The terminology would be a degree in Religious and Ministerial Studies.

Q. That's the term that appears on the graduation certificate?

A. Correct.

Q. Would a person who majors in Music Ministries be pursuing a degree in Theology?

A. Yes.

Q. And that is based upon what criteria?

A. The Department of Religion states the purpose of that department is to prepare students for ministry.

* * *

[29]

* * *

Q. I think I might have confused you. Let me rephrase.

One of the courses that a candidate would typically take, a Religious Studies major student, what courses would that person typically take during the first two years of their college career?

A. I have to admit, I am not able to list a number of courses by name. I can name a few. Students would take Biblical History, Doctrine. I could look in the catalog that's sitting there.

Q. Do the students also take during the first two years courses that are, perhaps, English, Mathematics, other what are commonly called core courses?

A. Yes, they would.

Q. And what department teaches those courses?

A. There are a number of requirements and electives that would be in different parts of the college, not just in the Religious and Ministerial Studies Department. For example, they would have to take English through Arts and Sciences; Math through Arts and Sciences. That type of situation.

Q. So a person who, for example, majored in English

[30]

that is taught through Arts and Sciences, and that was their declared major, would not be disqualified from the Washington Promise Scholarship if they were otherwise eligible?

A. Correct.

Q. Do you offer a degree in Psychology?

A. Yes.

Q. What department teaches that?

A. That is under the Arts and Sciences.

Q. Is a Psychology major required to take any courses with religious content by Northwest?

A. Yes.

Q. And what would those courses be?

A. I would have to refer to the catalog.

Q. Do you have that with you?

A. You do.

MR. McCALEB: Oh, it's there on the table. Is there any objection with her looking at

this, a Northwest 1999-2000 catalog, to refresh her memory? If there is, I don't mind dealing with this otherwise.

MR. SHINN: I guess my only objection would be that you'd have a situation where there's really, apparently, lack of personal knowledge. I don't object to having the witness look at it to see if it refreshes her recollection, though.

[31]

MR. McCALEB: Let's do that momentarily. I don't want you to read that exhaustively. But if you can glance at it.

THE WITNESS: Could you just restate the question.

MR. McCALEB: The question was: What courses of a religious nature or content a Psychology major would typically take. And again, the purpose of this is to refresh your memory. I don't want you to just read the book.

A. A Psychology major may take the History of The Bible, Evangelism, Church Doctrine type of classes.

Q. Is that a may take or a must take? Is there a school requirement that they take them?

A. It would be considered -- they are required to take a number of credits. And that could be part of what they took.

Q. Do you know if they are required to take any course as to religious content?

A. Yes.

Q. Do you recall which course that required course would be, or courses?

A. A number of courses would be offered. And they would choose.

Q. Cafeteria plan?

[32]

A. Correct.

Q. But they all have religious content?

A. Correct.

Q. Is this a common core for all majors at Northwest?

A. Yes.

(A brief recess was taken.)

MR. McCALEB: Lana, I'm going to interrupt the sequence of this document and introduce another document that we can discuss. This document was previously introduced into the record in Mr. Klacik's deposition as Exhibit 6.

Q. Do you recognize this document?

A. Yes, I do.

Q. And what is it?

A. It's a letter from John Klacik introducing, informing, colleges that students could not be majoring in Theology.

Q. Have you seen this document previously?

A. Yes, I have.

Q. When was that?

A. I have a copy of this letter that my college received.

* * *

[38]

* * *

Q. So more students actually declare a major in the first two years?

A. At my college, yes.

Q. Can you define that with a number or estimate percentage?

A. I can only guesstimate.

Q. Give me a guesstimate.

A. When students come in, I would say 15 percent come in undeclared at my college.

Q. Does Northwest have a rule that you must declare when you enroll at Northwest?

A. They do not.

Q. And rather obviously, does Northwest ever rule that you cannot declare a major the first two years?

A. They do not.

* * *

[51]

Q. Does it appear to be an accurate copy of the disbursement information sheet?

A. Yes.

Q. Was this guidance within this information sheet valid for the 1999-2000 school year?

MR. SHINN: I'm going to object to lack of personal knowledge. You can go ahead and answer.

A. Yes.

Q. If you'd look at the third to the last paragraph. The second to the last sentence reads: "If you choose, you may use the warrant to pay for tuition or other educational expenses, but the school may not automatically deduct anything from the warrant." What do you understand "educational expenses" to mean?

A. Educational expenses to me would mean tuition, a room and board, books, supplies.

Q. What about the purchase of a computer for schoolwork purposes?

A. I would determine that to be an educational expense.

Q. How about computer software that's relevant to a course?

A. I would call that educational ex[illegible]

Q. Would that include a Bible Studies software

[52]

program for, say, a Bible literature course?

A. Yes.

Q. What about a Bible study software program for a pastoral ministers' course?

A. Yes.

Q. Would that include the purchase of reference books -- not textbooks -- but reference books relevant to a course from a campus bookstore?

A. Yes.

Q. Would it include purchasing course reference books from an off-campus store?

A. Yes.

Q. Does it matter if educational items are purchased on campus or off campus?

A. No.

Q. Does it include groceries?

A. Yes.

Q. Tutoring?

A. Yes.

Q. Course-related field trips?

A. Yes.

Q. Internet access for research purposes?

A. Yes.

Q. Does the school provide internet access?

A. Yes.

[57]

* * *

Q. At the time of the appointment which you characterized as a few days after the 12th of October, was Mr. Davey at that time eligible for the scholarship?

A. Not according to the new criteria.

Q. Was he eligible prior to the issuance of the new criteria?

MR. SHINN: I'm going to object to that; lack of personal knowledge.

A. He was on the list of eligible students.

Q. And that list was the official State website?

A. Correct.

Q. Who has access to that website?

A. There may be more people than I know. But financial aid administrators, you get a password; you have to apply for it. You get a password and you're eligible to access the website.

Q. At Northwest College, is anyone beside yourself authorized to access that site?

A. Brian Renney.

Q. I will characterize your first appointment with Mr. Davey, the one a few days after October 12th, as the mid-October appointment. Is that sufficiently accurate, or were there a series of appointments?

A. I believe there was one appointment.

[58]

Q. I will call it the mid-October appointment, then.

At that mid-October appointment, is it correct to say Mr. Davey had become ineligible for the Promise Scholarship because of the religious restriction on the award of funds?

A. Correct.

Q. If he had changed his major at that time to, for example, Business Administration, and solely Business Administration, would that have affected his eligibility for the scholarship?

A. Yes, with a caveat.

Q. What's the caveat?

A. I will share with you how I talk to students in this situation.

Q. Okay.

A. Being a Christian school, and working with the State, this issue, as you can imagine, comes up. And with the student who is perhaps struggling with being eligible for State money and their major, I talk with them, If you plan to become a minister or to change your major to Religious Studies and you know that, and you know you want to be a minister or you know you want to go into the ministry, you should not accept this award no matter what your major.

[59]

Q. Why do you say that?

A. I believe that it is the spirit of the law that I've interpreted in the State of Washington, that separates the church and State. That is what they have meant, the founders of our Constitution.

Q. When you say "our Constitution," are you speaking of the federal government constitution or the State Constitution?

A. The State.

Q. If at the time of the mid-October appointment Mr. Davey had not declared a major, would he have been eligible for the Washington Promise Scholarship under the criteria existing then, which included the religious restriction?

A. I don't understand the question.

MR. McCALEB: It was a long, involved one. At the mid-October conference, or appointment, if Mr. Davey had not already declared a pastoral ministries major, would he have been eligible for the Washington Promise Scholarship?

A. Yes, with a caveat.

Q. What would that caveat be?

A. The one I explained. I sit with a student and talk to them, and I let them decide; I give them the choice. I say to the student, If you are planning to

[60]

become a minister, no matter what your major is, this warrant, this check, this award, is not intended to go to a student in your position. And I talk with the student, By just changing your major to get this award is not the correct thing to do.

Q. Let me first clarify my prior question. I think I unwittingly made it too narrow, in that I specified pastoral ministries major. What I really should have said was the Religious and Ministerial Department majors.

In other words, had Mr. Davey declared a major other than one within the Religious and Ministerial Department, would he have been eligible under the State criteria for the award?

A. Yes.

Q. But as I understand what you're telling me, there's also sort of a faith-based criteria that you feel that you need to discuss with the students.

Is that what you're telling me?

A. Correct. On a basis of -- in a situation like this, yes.

Q. So you have a State criteria which states you cannot receive the Promise Scholarship if you're pursuing a degree in Theology.

What motivates you to convey to the students not just the text of the law, but the spirit of the law?

[61]

A. I believe it's important for students to -- let me start over.

Being in Financial Aid for over ten years in this state, I feel it's important to manage or administer the State money as closely as I can to the written law and the spirit of the law. And with my experience in the State with working with folks from the Higher Education Coordinating Board and with other financial aid administrators from secular schools and sectarian schools, that this is the way I've defined it to students who, perhaps, may want to play the system, I feel that a student -- if an award is given by the State and it's not intended for

students majoring in Theology, and not studying for the ministry, I feel that our students should not try to have the money and then switch to a different major.

Q. Who told you to convey this spirit of the law to the students in that fashion?

A. No one has told me that. I do check with students who are receiving State funding; we do check the classes they're taking. And if the student will be taking strictly all classes that would lead to a degree in Religious and Ministerial Studies, I would talk with the student. I think to me it's an ethical --

Q. So this written State requirement that you

[62]

cannot pursue a degree in Theology, in your situation is requiring a more, I guess you could say, conservative approach because of the ethical implications; is that correct?

A. Correct.

* * *

Q. Within this context of ethical counseling, is there a faith-based component to that?

A. On my part?

Q. Yes.

A. Yes.

Q. Could you briefly describe that.

A. When I counsel students, I talk to them, as I explained previously, about their intention. And I talk with them. And if they say to me, I don't

know; I don't know if I want to be a minister, I don't know if I want to be a businessman, I have faith in the student that they will be truthful with me in what they're doing in determining their major.

Q. If you had, for example, a student who was a declared Psychology major and you were having your financial aid counseling session with them, and this student expressed a firm religious conviction that he was

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studying Psychology to become a minister and he felt this source of study would help him become most effective Christian minister he could be, would you feel a moral or faith-based obligation to discuss with him or urge him not to accept State financial aid because of his intent to become a minister under the spirit of the state law as you perceive it?

A. I would talk with him and I would explain to him my understanding of the State Financial Aid programs and what students they want to see receive the money. And I would talk to him about it and see what decision he would make.

Q. Would you encourage him either way?

A. I would state the facts. And I would say, It is up to you.

* * *

[66]

* * *

A. It's my understanding that we would have several weeks notice.

Q. Have you received any notice that you will be audited in this regard?

A. No.

Q. Do you know who would conduct that audit if one was to be conducted? Is it through the HECB?

A. It would be through the HECB. I would not know of a particular person or office that would do that.

Q. We've discussed the Condition of Award form that the student signs.

Is there also a form that the school provides to the State to verify that the student is not pursuing a degree in Theology?

A. There is a statement that we send. We send the list of students we request a warrant for -- like I mentioned, an e-mail with an Excel attachment -- and we follow up with a certification that the students are eligible according to the guidelines. And we send that via mail and sign it, that these students are eligible for the program according to the State's regulations.

* * *

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* * *

Q. You mentioned earlier in the conversation that there were two female students who changed their major in 1999, Hamer and Robinson.

Realizing memories are funny and you get things back over time, do you happen to recall if they declared majors in the fall of 1999?

A. They declared undeclared.

Q. At your mid-October appointment when you had the discussion with him and he had already declared a pastoral ministries major, he had learned he was ineligible for the State funding because of that, could he have retracted or rescinded that declaration and become an undeclared major at that point?

A. He could have, yes.

Q. Would that have made him eligible for the Promise Scholarship under the State criteria?

A. Yes.

* * *

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* * *

MR. McCALEB: * * *. It is within the normal scope of your professional duties to counsel students in this way?

A. Yes.

* * *

EXAMINATION

BY MR. SHINN:

* * *

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* * *

Q. Aside from the HECB Board, have you sought guidance from any other State officials regarding what it means?

A. Besides the HECB Board?

Q. Yes.

A. I have talked to colleagues that are at private schools, sectarian schools. I have sought guidance from other professionals.

Q. Have those contacts all been with colleagues at private institutions?

A. Yes.

Q. I don't want you to divulge any advice that you may have received from an attorney that was advising the college. But without telling me what that advice is, have you ever sought legal advice on what a degree in Theology is?

MR. McCALEB: Objection to the extent that any attorney-client privileged information is involved.

A. No.

Q. You spoke earlier in your deposition about the

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Condition of Award letter. Am I correct in understanding that you asked students to sign a Condition of Award letter as a precept to receiving the Promise Scholarship?

A. Correct.

Q. Has anybody from the Higher Education Coordinating Board indicated to you that

students must sign a Condition of Award letter to qualify for the Promise Scholarship?

A. They have to sign it to receive it.

Q. And my question to you is: Has anybody at the HECB Board indicated that the students have to sign a Condition of Award letter to receive the Promise Scholarship?

A. Yes.

Q. Who has indicated to you that students had to sign a Condition of Award to get the Promise Scholarship?

A. It's my understanding from John Klacik, and the correspondence from the HECB, that a student is required to sign that certification at the time they're presented with the award.

Q. Is it your testimony that you've had conversations with Mr. Klacik in which he has indicated verbally that students need to sign a Condition of Award letter to qualify for the Promise Scholarship?

A. I believe my understanding of the certification

[80]

would be from his correspondence, not in a phone call or a personal discussion.

Q. Is it correct to say that it's your belief that the documentation, either through e-mail or letter or memorandum from Mr. Klacik, has indicated that students need to sign a Condition of Award letter to be awarded the Promise Scholarship?

MR. McCALEB: I object to that characterization. You may answer.

A. Yes.

Q. So you recall that you've received either a letter or e-mail from Mr. Klacik indicating the students needed to sign a Condition of Award letter?

A. Yes.

Q. Do you recall which communication had that requirement in it?

A. I do not recall which communication. I probably could access something that had it in it, but I don't recall specifically which correspondence.

Q. Do you think that it might be among the documents that you brought with you today?

A. I could look.

Q. If you would take a look, I'd appreciate it.

A. (The Witness complied.) This is a correspondence that included the addition to pursuing a degree voucher to

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the payment request form, but not to the actual students signing it (indicating).

* * *

MR. SHINN: Let me just ask, if you would, to restate what that document entails, if there's no objection.

THE WITNESS: This document I have from John Klacik indicates the addition of the stipulation that a student not be pursuing a

degree in Theology that was added as a condition that the school signed, on the certification that the school sends to the State via mail, to follow the Excel spreadsheet that would request the warrant.

That is what this document is. I don't have in my notes here a document saying the student has to sign a certification.

Q. And let's make sure -- I think the document you're referring to has previously been identified as Exhibit 6 to John Klacik's deposition.

We want to just make sure that you're looking at the same document.

A. Correct. It states here: "A statement certifying that Washington Promise Scholarship recipients

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are not pursuing a degree in Theology will be added to the payment request form." And that is the form that the school signs. And it's not for a particular student.

I don't have in my notes here the correspondence from them indicating that a student must sign a particular statement. But with the other State programs, a student must sign. When a student is in the Washington State Work Study program or the State Need Grant program, they must sign a statement that's called Terms and Conditions of Award. And they certify on those, I am not pursuing a degree in Theology.

And we have added that to the Promise Scholarship recipients as well. At this time, I'm

not sure if we added it, or John Klacik or the State requested we do it.

Q. So it's accurate to say that at this time you believe it's possible that the requirement that students sign a Condition of Award letter is actually something that Northwest College implemented on its own volition?

A. I'm not sure; it could be.

Q. It could be. But it's possible you believe that Mr. Klacik did indicate that a Condition of Award letter was necessary for the Promise Scholarship?

A. Correct.

* * *

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* * *

Q. You testified earlier that you understand that the spirit of the law is that State financial aid funds do not go to a student who is preparing for service in the ministry; is that right?

A. Correct.

Q. In the fall of 1999, was a warrant distributed from the HECB Board to Northwest College for the plaintiff, Joshua Davey, for the Promise Scholarship?

A. No.

* * *

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* * *

Q. Referring to what's been marked as Exhibit No. 3. This is a copy of the Northwest College Mission as is available on the Northwest College website.

Are you familiar with the Northwest College Mission statement?

A. Yes.

Q. Does this appear to be an accurate copy of that statement as is posted on the college's website?

A. Yes.

Q. Referring you to the paragraph under Educational Philosophy, the first paragraph about midway down the page, it states that: "Northwest College's concept of education is distinctly Christian in the evangelical sense." And goes on to state: "It recognizes the authority of the Bible as the divine communication of

[100]

truth."

Can you tell me what it means to recognize the authority of the Bible as the divine communication of the truth, as you understand it?

* * *

A. As I understand it, that the Bible is the -- well, it is the Word of God. And it is where Christians go to seek answers to -- where Christians go for counsel, advice, for how Jesus wants us to live our life.

Q. Can you tell me, does that accurately reflect the college mission as you understand it?

MR. McCALEB: Object to personal knowledge. Go ahead and answer.

A. My understanding of our mission is to provide our students, through instruction, through modeling, through our classes, to use the Bible as truth to prepare them, that when they are in their careers, wherever they choose, wherever they go, that they would use the Bible as their guide, as the truth. And to prepare the students, as we say, "for service and leadership."

* * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA DAVEY,

Plaintiff,

vs.

GOVERNOR GARY LOCKE, et al.,

Defendants.

JUDGMENT

Cause No. C00-61R

This matter having come before the court and the issues having been decided, IT IS NOW, THEREFORE, ORDERED that Davey'S [sic] motion for summary judgment is DENIED and HECB's motion for summary judgment is GRANTED. As a matter of law, HECB is entitled to complete dismissal of Davey's complaint.

6 October 2000

BRUCE RIFKIN
Clerk of Court
By
//s//
Elizabeth Tyree
Deputy Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA DAVEY,

Plaintiff,

v.

GOVERNOR GARY LOCKE, individually and in his official capacity, et al.,

Defendants.

No. C00-61R

ORDER DENYING PLAINTIFF'S MOTION FOR TEMPORARY INJUNCTION

I. BACKGROUND

THIS MATTER comes before the court on plaintiff Joshua Davey's motion for a temporary injunction during the pendency of his appeal to the Ninth Circuit from this court's October 5, 2000 order denying his and granting defendants' motions for summary judgment. Davey now seeks an order from this court pursuant to Federal Rule of Civil Procedure (hereinafter "Rule") 62(c) directing Governor Locke and the State Higher Education Coordinating Board to put $1542, representing financial aid funds he claims entitlement to, into an escrow account until his appeal is resolved.

Davey initially brought suit against Governor Locke, Marcus Gaspard, Executive Director of the Higher Education Coordinating Board, Bob Craves, Chair of the Higher Education Coordinating Board, and John Klacik, Associate Director of the Higher Education Coordinating Board (hereinafter

collectively referred to as "HECB" unless individually identified) claiming that HECB's denial of financial aid in support of his religious education violated his state and federal constitutional rights. This court disagreed, finding that the state was precluded from supporting his religious instruction in its constitution, and that its decision was within the limits imposed by the First Amendment to the United States Constitution. Davey appealed from that decision to the Ninth Circuit Court of Appeals. Davey now claims that, should he prevail on appeal, his right to receive financial aid will be impaired by operation of the Eleventh Amendment's sovereign immunity bar against retrospective damages.

II. DISCUSSION

Rule 62(c) provides the court with the discretion to grant an injunction during the pendency of Davey's appeal from its order denying his claims. Fed. R. Civ. P. 62(c). In exercising this discretion, the court considers 1) whether the moving party has made a strong showing of his likelihood of success on the merits of his appeal; 2) whether he has demonstrated irreparable injury should an injunction not issue; 3) whether the potentially enjoined party would suffer substantial injury from the injunction; and 4) whether the proposed injunction is in the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). Similar to the standard for preliminary injunction, "the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the

equities weighs heavily in" the moving party's favor. *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981).

Davey presumes a strong likelihood of success on the merits of his appeal. He fails to acknowledge that this court has twice disagreed fundamentally with his construction of the law and denied the very relief he now seeks. Each appellate issue Davey relies on to demonstrate a substantial case on the merits is wholly contrary to well-established federal law, and he fails to address the long line of Washington state decisions that dispose of many of his claims. The court therefore finds that Davey has an exceptionally weak chance of succeeding on the merits of his appeal.

That notwithstanding, Davey has raised the possibility of irreparable injury in that the Eleventh Amendment may protect Washington from a damage award should the Ninth Circuit reverse this court, while prospective relief in the form he now requests is not likewise barred. HECB has not disputed his construction of law with respect to this state immunity doctrine. In response, HECB has offered to set aside the $1542 Davey seeks in its operating budget to preserve the funds in the event of reversal.

The court finds that offer to set aside funds in HECB's operating budget sufficient to protect Davey's interest during the appeal process. HECB has made a sworn representation to the court that it will preserve the funds Davey seeks, and will pay those funds to him in the event this court's decision is overturned. That reliable representation virtually obviates the risk of irreparable harm and, combined

with the weakness of the merits of Davey's case, dictates that Davey's motion be denied.[1]

III. CONCLUSION

For the reasons expressed above, the court, in its discretion, hereby DENIES Davey's motion for a temporary injunction. The court accepts HECB's offer to set aside $1542 during the pendency of Davey's appeal, which shall be paid to Davey upon court order in the event that he prevails on appeal.

DATED at Seattle, Washington this 21st day of November, 2000.

//s//
BARBARA JACOBS ROTHSTEIN
UNITED STATES DISTRICT JUDGE

[1] In light of HECB's proposed arrangement, the court need not discuss the additional elements under *Braunskill*, except to state that it finds no public interest implicated by the instant motion.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PLAINTIFF'S NOTICE OF FILING AGREEMENT REGARDING ESCROW OF FUNDS

[Caption Omitted In Printing]

PLEASE TAKE NOTICE that plaintiff Joshua Davey, through counsel, submits the attached Agreement Regarding Escrow of Funds for filing with this court. This agreement was entered into pursuant to this Court's November 21, 2000 Order and is being submitted accordingly.

[top of page]

JOSHUA DAVEY V. GARY LOCKE, ET AL.

AGREEMENT REGARDING ESCROW OF FUNDS

The parties to this agreement are the plaintiff in *Joshua Davey v. Gary Locke, et al.*, Western District of Washington Federal District Court Cause No. C00-0061R, and the defendants in that action, Gov. Gary Locke, Bob Craves, Marcus Gaspard, and John Klacik.

Whereas on November 6, 2000, the defendants agreed to hold $1,542.00 in reserve, to provide a fund from which plaintiff would be paid should plaintiff's appeal of the District Court's order dismissing his claims ultimately lead to an order that plaintiff should have been provided Promise Scholarship funds for the 2000-2001 academic year; and

Whereas the plaintiff's request that the District Court enter a temporary injunction requiring defendants to place $1,542.00 into private escrow

pending plaintiff's appeal of the dismissal of his claims was denied by the District Court by order dated November 21, 2000; and

Whereas the plaintiff intended to seek similar relief from the Ninth Circuit Court of Appeals, NOW THEREFORE:

The defendants agree to provide a reserve fund to provide for the contingency that plaintiff could prevail in the appeal of the dismissal of his claims by purchasing a six (6) month certificate of deposit in favor of Marcus Gaspard in his official capacity as Executive Director of the Washington State Higher Education Coordinating Board, and Kevin Theriot, as attorney for plaintiff Joshua Davey.

Defendants, through their attorney Michael Shinn, Assistant Attorney General, will provide proof of purchase of this certificate of deposit satisfactory to Mr. Theriot, which approval will not be unreasonably withheld. Defendants will renew or permit the certificate of deposit to be automatically renewed until one of the following occurs:

(a) If final judgment is entered dismissing plaintiff Joshua Davey's claims or otherwise rejecting his claims that he was entitled to payment of Promise Scholarship funds for the 2000-2001 academic year, from which no timely appeal is taken, Mr. Theriot will endorse the current certificate of deposit and any interest in the certificate of deposit over to the Higher Education Coordinating Board, together with interest then accrued, and return the endorsed certificate of deposit to the Higher Education Coordinating Board through its attorneys; or

(b) If final judgment is entered ordering that plaintiff Joshua Davey is or was entitled to award of Promise Scholarship funds for the academic year 2000-2001 , [sic] from which no timely appeal is taken, the Higher Education Coordinating Board, through its Executive Director, will endorse the then-current certificate of deposit in favor of Kevin Theriot as attorney for plaintiff Joshua Davey, together with interest then accrued, and provide the certificate to plaintiff through his attorney.

Plaintiff agrees, during the pendency of this agreement, not to seek judicial intervention requiring other escrowing of Promise Scholarship funds for plaintiff.

The parties agree that this agreement may be modified in writing by mutual consent of the parties at any time.

//s//	//s//
Michael J. Shinn, WSBA# 22329 Assistant Attorney General Attorney for Defendants	Kevin H. Theriot American Center For Law and Justice Attorney for Plaintiff
Dated this 12th day of January, 2001.	Dated this 4th day of January, 2001.

WASHINGTON REGULATIONS

Wash. Admin. Code 250-80-010
Purpose.

The Washington promise scholarship program recognizes and encourages the aspiration for superior academic achievement of high school students who attend and graduate from Washington high schools. The program offers a two-year scholarship for eligible students that may be used at any accredited institution within the borders of the state. The scholarship may also be used at certain Oregon institutions offering programs not offered in Washington.

Wash. Admin. Code 250-80-020
Definitions.

(1) "Board" means the higher education coordinating board.

(2) "OSPI" means the office of the superintendent of public instruction.

(3) "High school" means a secondary institution in Washington state identified by the office of the superintendent of public instruction as qualified to confer high school diplomas to a graduating senior class.

(4) "Parent(s)" mean the biological or adoptive parent of the student applicant and the spouse of a biological or adoptive parent. In cases of divorce or separation the parent for purposes of reporting income and family size is the biological or adoptive parent who provided more than one-half of the applicant's support in the previous twelve

months. The term parent does not include either foster parents or legal guardians.

(5) "Family size" is the number of people for whom the applicant's parent(s) provided more than one-half of the support in the previous twelve months.

(6) "Income," in most cases means the applicant parent's adjusted gross income (AGI) as reported on the previous calendar year's federal tax return. For the independent student, income means the student's adjusted gross income as reported on the previous calendar year's federal tax return.

(7) "Independent student" means a student whose biological parents are both deceased and there is no adoptive parent, or the student is a "ward of the court," or the student has been legally emancipated by court order. The board may also recognize a student as independent due to exceptional circumstances as recognized by the appeal committee.

(8) "Appeals committee" means a committee convened by the board to review petitions and requests by students for consideration of individual exceptional circumstances.

(9) "Median family income (MFI)" means the median income for the state of Washington, by family size, as compiled by the federal Bureau of the Census and reported annually in the *Federal Register*.

(10) "Income cutoff" means one hundred thirty-five percent of the median family income.

(11) "Academic year" means the fall, winter, and spring quarters or the fall and spring semesters between July 1st and June 30th.

(12) "Eligible student" means a person who:

(a) Graduates from a public or private high school located in the state of Washington; and

(b) Is in the top fifteen percent of his or her 2000 graduating class; or

(c) Attained a cumulative score of 1200 or better on the Scholastic Assessment Test I (SATI) on the first attempt; or

(d) Attained a cumulative score of 27 or better on the American College Test (ACT) on the first attempt; and

(e) Has a family income less than one hundred thirty-five percent of the state's median; and

(f) Enrolls at least half time in an eligible postsecondary institution in the state of Washington; and

(g) Is not pursuing a degree in theology.

(13) "Eligible postsecondary institution" means:

(a) A public institution authorized by the Washington legislature and receiving operating support through the state general fund; or

(b) A postsecondary institution, whose campus or branch campus is physically located in the state of Washington, and who is accredited by a nationally recognized accrediting body. The recognized accrediting bodies are:

(i) Northwest Association of Schools and Colleges or a similar regional accrediting body as determined by the board;

(ii) Accrediting Bureau of Health Education Schools;

(iii) Accrediting Council for Continuing Education and Training;

(iv) Accrediting Commission of Career Schools and Colleges of Technology;

(v) The Accrediting Council for Independent Colleges and Schools;

(vi) The National Accrediting Commission of Cosmetology Arts and Sciences;

(vii) Middle States Association of Colleges and Schools, Commission on Higher Education;

(viii) New England Association of Schools and Colleges;

(ix) North Central Association of Colleges and Schools;

(x) Southern Association of Colleges and Schools;

(xi) Western Association of Schools and Colleges; or

(c) An accredited Oregon postsecondary institution that offers a program not offered in Washington and is located in either Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco or Washington county. The

institution must be accredited by one of the accrediting bodies listed above; and

(d) Agrees to administer the program in accordance with the applicable rules and program guidelines.

(14) "Authorized use period" means the period of time the eligible student has to complete using his or her scholarship.

Wash. Admin. Code 250-80-030
Application procedure.

(1) The eligible student will make application directly to the board.

(2) The completed application will include a data sheet, signed certification statement, a copy of the parent's previous calendar year's federal tax return for the purpose of verifying the income, and any other documentation requested by the board in response to missing, incomplete, or unclear information. Student income information will be accepted, in lieu of parental information, when the board recognizes the applicant as being an independent student.

(3) The board will treat all applications in a confidential manner.

(4) Applications will be made available through several means including:

(a) Mailings to public and private high school principals in the state;

(b) Posting on the HECB website (HTTP://WWW.HECB.WA.GOV/);

(c) Direct mailing to students.

(5) The board will annually set a deadline for the receipt of applications from that year's eligible graduating high school seniors and the deadline for renewal applications from eligible students having graduated in prior years.

(6) Applications must be received by the deadline for each graduating class of high school seniors to be considered for payment at any time during the authorized use period.

Wash. Admin. Code 250-80-040
Recipient selection.

(1) Recipients include all eligible students who have completed applications prior to the annual deadline, who are verified as having finished in the top ten percent of their senior graduating high school class, and who enroll in an eligible school.

(2) The student who is determined eligible for the first year of scholarship benefits is also presumed eligible for the second year's benefits. The student will not need to provide income information after once establishing his or her eligibility.

(3) Students not meeting the eligibly requirements for the first year of scholarship benefits may reapply for the second year of benefits.

(4) Eligibility determinations made by the appeals committee are final.

Wash. Admin. Code 250-80-050
Authorized award amounts.

(1) The maximum annual authorized award shall not exceed the representative average annual tuition and fees for resident students attending the state's

community and technical colleges, as determined by the board.

(2) The actual authorized annual award for each recipient shall be the annual appropriation, as determined by the board to be available for grants, evenly prorated among the eligible students.

Wash. Admin. Code 250-80-060
Grant disbursement.

(1) Eligible students must enroll on at least a half-time status in order to receive a scholarship disbursement.

(2) Grants to students will be disbursed in equal payments, once per term, across the three quarter or two semester academic year.

(3) State of Washington public colleges and universities may request payment for funds up to the limit of the per term award for each enrolled eligible student. The state public college or university may apply the proceeds of the scholarship to any outstanding debt owed by the student to the institution. The institution must disburse any remainder directly to the eligible student.

(4) Nonstate institutions may request that checks be written to eligible students attending their schools. The board will write individual warrants payable to each eligible student and delivered to the school for disbursement.

(5) The independent university and the private vocational school must disburse the warrant once the student's half-time or greater enrollment has been verified. The school may not withhold or delay disbursement for any reason other than for less than

half-time enrollment. The school has thirty days to either disburse the warrant or return it to the board.

Wash. Admin. Code 250-80-070
Renewals and authorized use period.

(1) Eligible students may renew their award for the second year's benefits, subject to the availability of funding.

(2) The deadline for the return of renewal applications will be set annually by the board.

(3) The board will determine the maximum number of years each class of graduating high school seniors has to complete usage of the scholarship.

(4) For the graduating classes of 1999 and 2000, the authorized use period is limited to two consecutive years following graduation. Students who were not eligible for the first year of benefits, or who did not use the first year of benefits, may reapply for the second year benefits, but may not renew for a third year.

(5) Receipt of the scholarship is dependent upon the availability of funding.

Wash. Admin. Code 250-80-080
Appeals.

(1) The board will set an annual deadline for the receipt of appeals.

(2) Appeals must be submitted to the board in writing before the application deadline.

(3) The board may use its judgment to except individual students from a program rule or rules based on substantial documented mitigating circumstances.

Wash. Admin. Code 250-80-090
The account.

(1) The Washington promise scholarship account is established in the custody of the state treasurer for the purpose of administering the Washington promise scholarship program.

(2) The annual allotment is to be deposited into the account for the purpose of making commitments to students for future scholarship payments, disbursements of the scholarship awards, and for the administrative expenses of the program, as limited by the board's biennial budget provisos.

(3) All moneys not claimed by students, the refund of tuition and fees, and contributions from nonstate sources are to be deposited into the account and used for future payments.

Wash. Admin. Code 250-80-100
Program administration.

(1) The higher education coordinating board shall administer the program. The board shall be responsible for:

(a) Collection of student applications;

(b) Determination of student eligibility;

(c) Determination of the eligibility of postsecondary institutions within Washington;

(d) Adjudication of all appeals;

(e) Disbursement of awards; and

(f) Maintenance of records.

(2) The OSPI shall be responsible for:

(a) Certifying the list of qualified high schools in the state of Washington;

(b) Providing guidance to high schools as to how the top ten percent or fifteen percent of each senior graduating class shall be determined;

(c) Specifying the number of students per high school that may be named as comprising the top ten percent or top fifteen percent of the graduating class;

(d) The collection and compilation of the list from each high school of the top ten percent or top fifteen percent of each graduating high school class; and

(e) The delivery of that list to the board.